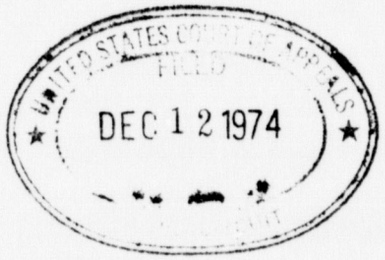
United States Court of Appeals

for the Second Circuit

APPENDIX



74-1290

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs-Appellants,

vs.

LEE NATIONAL CORPORATION,

Defendant-Appellee.

APPENDIX

(Volume I—pages 1A to 405A)

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PAGINATION AS IN ORIGINAL COPY

INDEX

	PRINTED PAGE
Docket Entries.....	1A
Complaint.....	6A
Exhibit 1 - Copy of Working Agreement between Local 102 and Republic Rubber Division dated July 3, 1961 - Exhibit May 1, 1961	25A
Exhibit 2 - List of Grievances presented by Local 102.....	26A
Exhibit 3 - Copy of Welfare Agreement Covering Pension Service Award and Insurance Benefits Between Local 227 and Lee Rubber and Tire Corp., dated June 30, 1961.....	27A
Exhibit 4 - Copy of Amendment of Welfare Agreement Covering Pension, Service Award and Insurance Benefits, dated December 17, 1962 Between Local 227 and Lee Rubber and Tire Corp.....	28A
Exhibit 5 - Letter from Lee National Corp. to Local 227 Dated January 1962, Rejecting Alleged Grievances Based on Refusal to Pay Severance Benefits.....	29A
Exhibit 6 - Form Letter from Lee National Corp. to All Employees, dated January 25, 1965 Rejecting Individual Claims for Severance Benefits.....	30A
Amended Complaint.....	33A
Answer to Amended Complaint.....	54A
Plaintiffs' Reply to Counterclaim.....	75A
Transcript of Testimony.....	79A
OPINION # 37431 per Mansfield, J.....	1442A
Pre-Trial Order.....	1461A
OPINION # 39484 per Knapp, J.....	1487
Memorandum Decision & Order per Knapp, J.....	1492A

INDEX

	PRINTED PAGE
Supplemental order per Knapp, J.....	1494A
OPINION #39975 per Knapp, J.....	1496A
Judgment Dismissing Complaint.....	1503A
Memorandum Decision per Knapp, J.....	1505A
Order Amending Judgment #74035 per Knapp, J.	1509A

PLAINTIFFS' WITNESSES

	PRINTED PAGE
Charles T. Hess, Jr.	
Direct	87A
Cross	187A
Redirect	255A
Recross	281A
Recalled Direct	977A
George B. Vasko	
Direct	302A
Cross	326A
Resumed Cross	589A
Robert E. Garber	
Direct	332A
Resumed Cross	390A
Cross	465A
Redirect	577A
Walter Tarbutton	
Direct (voir dire)	380A
Cross	385A
Maurice M. Clairmont	
Direct	610A
Willard L. Heinrich	
Direct	1006A
Cross	1013A
Resumed Direct	1019A
Cross	1020A
Redirect	1729
Michael G. Sabol	
Direct	1033A
Joseph J. Conway	
Direct	1133A
Cross	1229A
Redirect	1352A

EXHIBITS

		PRINTED PAGE
1.	Lee - Local 102 Working Agreement, dated July 3, 1961, but effective May 1, 1961 (D. Dep. AAA).....	1215A
2.	Lee - Local 102 Working Agreement, dated October 31, 1963, (D. Dep. H).....	1513A
3.	Memorandum of Understanding re assignment of Lee - Local 102 Welfare Agreement, dated October 28, 1963 (D. Dep. 1).....	1541A
4.	Memorandum of Understanding re assignment of Supplemental Unemployment Benefit Plan, dated October 28, 1963 (D. Dep. J).....	1542A
5.	Local 102 letter, dated October 28, 1963, to Company re Aeroquip as acceptable purchaser (Marked TM-1).....	1544A
6.	Lee letter to Local 102 re assignment to Aeroquip, dated December 20, 1963, including attached copy of assignment of Working Agreement (called General Agreement therein) and SUB Plan and attached copy of assignment of Welfare Agreement, both dated December 20, 1963 (D. Dep.K)	1545A
35.	Lee - Local 227 Working Agreement, dated June 30, 1961 (D. Dep. P).....	1549A
36.	Lee - Local 227 Welfare Agreement, dated June 30, 1961 (Ex. 3 to original complaint).....	1581A
37.	December 17, 1962, amendment to Lee - Local 227 Welfare Agreement (Ex. 4 to original complaint).	1607A
38.	Lee letter to Local 227, dated April 18, 1963, re opening Working Agreement (D. Dep. X).....	1610A
39.	Local 227 letter to Lee, dated April 29, 1963, re opening Working Agréement (D. Dep. S).....	1611A

EXHIBITS

		PRINTED PAGE
40.	Strong-Narovec Report, dated June 14, 1963 (TM-28).....	1612A
41.	Lee telegram to Local 227, dated June 29, 1963, re continuing work under old Working Agreement (TM-29).....	1619A
42.	Local 227 telegram to Lee dated July 1, 1963, re continuing to work under old Working Agreement (TM-30).....	1620A
43.	Lee letter to Local 227 dated July 16, 1963, re unwillingness to work longer under old Working Agreement (P. Dep. 3).....	1621A
44.	New Conshohocken work rules dated July 18, 1963 (P. Dep. 12).....	1623A
45.	Lee letter to Local 227, dated May 1, 1964, reopening Welfare Agreement (D. Dep. Y).....	1626A
48.	Lee letter to Local 227, dated July 8, 1964 re terminating Welfare Agreement (D. Dep. CC)..	1628A
50.	Lee letter to all employees, dated December 14, 1964 (D. Dep. FF).....	1629A
51.	Lee letter to each employee, dated December 14, 1964 re termination of employment (D. Dep. FF).....	1631A
6A.	Union letter to Lee, dated July 13, 1962, re Company requested amendments to Welfare Agreement (D. Dep. SSS).....	1632A
8A (1)	Lee letter to Local 102, dated July 17, 1963 re effective date for new working conditions at Youngstown plant.....	1633A
8A (2)	New terms and condition s of employment (Work Rules posted by Republic Rubber Division on July 18, 1963 at Youngstown plant).....	1634A
8A (3)	Lee letter to Local 102 dated July 31, 1963 re discontinuance notice re layoffs.....	1639A

EXHIBITS

		PRINTED PAGE
8A (4)	Notice dated August 1, 1963 posted by Republic Rubber Division at Youngstown plant re amendments to working conditions	1640A
8A (5)	Lee letter to Local 102 dated August 2, 1963 re changes in shifts.....	1641A
8A (6)	Republic Rubber Division notice posted August 2, 1963 re changes in shifts.....	1642A
13A	Lee letter to Local 227, dated June 28, 1963 enclosing Company proposals (TM-2).....	1643A
17A	NLRB letter to Local 227, dated October 4, 1963 re non-issuance of complaint against Lee (TM-33)	1650A
18A	NLRB letter to International Union dated December 9, 1963, re upholding non-issuance of complaint (TM-34).....	1652A
19A	Lee letter to Local 227, dated March 10, 1964, re laid-off employees (P. Dep. 14).....	1653A
26A	Article in "United Rubber Worker" for December, 1964, entitled "Ignores Plea of URS U. S. Rubber Making Lee Tires" (marked TM-3).....	1655A
29A	Lee letter to G.L. Patterson, dated July 25, 1962 (D. Dep. QQQ).....	1656A
30A	Record of meeting between Lee and representatives of Locals 102 and 227 at Akron on October 31, 1962 (D. Dep. Q)	1660A
31A	Record of meeting between Lee and representatives of Local 102 at Akron on November 13, 1962 (D. Dep. R).....	1662A
32A	Record of meeting between Lee and representatives of Local 227 at Akron on November 16, 1962 (D. Dep. II).....	1664A

EXHIBITS

		PRINTED PAGE
35A	Union notes of negotiation session between Lee and Local 227 on July 16, 1963 (D. Dep. OO)....	1666A
36A	Union notes of negotiation session between Lee and Local 227 onJuly 16, 1963 (D. Dep. PP)....	1667A
37A	Union notes of negotiation session between Lee and Local 227 on July 30, 1963 (D. Dep. QQ)...	1668A
38A	Union notes of negotiation session between Lee and Local 227 on August 6, 1963 (D. Dep. RR)..	1672A
39A	Union notes of negotiation session between Lee and Local 227 on August 15, 1963 (D. Dep. SS)..	1675A
40A	Union notes of negotiation session between Lee and Local 227 on September 4, 1963 (D.Dep. TT).	1678A
41A	Union notes of negotiation session between Lee and Local 227 on September 19, 1963 (D. Dep. UU)	1681A
42A	Union notes of negotiation session between Lee and Local 227 on June 24, 1964 (D. Dep. VV)...	1683A
43A	Union notes of negotiation session between Lee and Local 227 on June 30, 1964 (D. Dep. WW)...	1688A
54A	1962 Lee Annual Report to stockholders (TM-5)	1694A
55A	1963 Lee Annual Report to stockholders (TM-6)..	1702A
56A	1964 Lee Annual Report to stockholders (TM-7)	1713A
57A	1965 Lee Annual Report to stockholders (TM-8)	1723A
60A	SEC Form 4, signed by M.M. Clairmont, dated July 1, 1963 (TM-11) reflecting individual purchases for June, 1963.....	1731A
60A (1)	SEC Form 4, signed by H.L. Schick, dated July 1, 1963 reflecting individual purchases for June, 1963.....	1731A-1
60A (2)	SEC Form 4, signed by H.L. Schick, dated July 1, 1963 reflecting purchases of Darfina, A.G. for June, 1963.....	1732A

EXHIBITS		PRINTED PAGE
60A (3)	SEC Form 4, signed by M.M. Clairmont, dated July 1, 1963, reflecting purchases for June, 1963.....	1733A
60A (4)	SEC Form 4, signed by M.M. Clairmont dated January 31, 1963 reflecting individual purchases for January, 1963.....	1734A
60A (5)	SEC Form 4, signed by M.M. Clairmont, dated November 5, 1963 reflecting individual purchases for October, 1963.....	1735A
60A (6)	SEC Form 4, signed by H.L. Schick dated November 7, 1963 reflecting purchases of Matignon N.V. for October, 1963.....	1736A
60A (7)	SEC Form 4 (3 attached documents): signed by A.A. Garthwaite, Jr. dated December 12, 1963 reflecting individual purchases for November, 1963; signed by Willard L. Heinrich dated December 2, 1963 reflecting individual purchases for November, 1963; signed by H.L. Schick dated December 2, 1963 reflecting individual purchases for November, 1963.....	1737A
60A (8)	SEC Form 4 signed by M.M. Clairmont, dated January 2, 1964 reflecting individual purchases for December 1963.....	1740A
60A (9)	SEC Form 4 (4 attached documents): signed by H.L. Schick dated January 2, 1964 reflecting purchases of Darfina, A.G. for December, 1963; signed by H.L. Schick dated January 2, 1964 reflecting purchases of A. Marcus for December, 1963; signed by H.L. Schick dated January 2, 1964 reflecting purchases of Matignon N.V. for December, 1963; signed by M.M. Clairmont dated January 2, 1964 reflecting purchases of Mornay Corp. for December , 1963.....	1742A
61A	Lee Letter to stockholders, dated November 25, 1963, re sale to Aeroquip (TM-12).....	1745A

EXHIBITS

		PRINTED PAGE
62A	Lee Notice of special stockholders meeting and proxy statement signed by Harry L. Schick, dated November 25, 1963 (TM-13).....	1746A
64A	Lee notice of shareholders meeting and proxy statement signed by Harry L. Schick, dated January 12, 1965 (TM-14-A).....	1767A
65A	Lee letter to shareholders, dated July 14, 1965, signed by M.M. Clairmont (TM-15).....	1772A
66A	Lee notice of annual meeting of shareholders and proxy statement, signed by Cyrus C. Hoffman dated January 10, 1966 (TM-16).....	1773A
68A	Lee letter to shareholders, dated January 19, 1966 signed by M.M. Clairmont (TM-18).....	1782A
69A	Lee notice of annual meeting of shareholders and proxy statement, signed by Cyrus C. Hoffman, dated January 10, 1968	1783A
70A	Lee letter to stockholders, dated January 26, 1968 signed by M.M. Clairmont (TM-20).....	1789A
75A	URW v. Local 227, URW, complaint in equity in Case No. 66-10963, Court of Common Pleas of Montgomery County, Pennsylvania, verified by Michael G. Sabol on August 31, 1966 (TM-24)....	1790A
86A	Lee letter to stockholders, dated June 12, 1963 signed by A.A. Garthwaite, Jr. (TM-42).....	1792A
87A	Proposed amendment to Welfare Agreement, made at July 25, 1962 meeting (D. Dep. NN).....	1794A
88A	Proposed amendment to Welfare Agreement, dated "July 2" (TM-43).....	1795A
89A	Proposed amendment to Welfare Agreement, dated "July 3" (TM-44).....	1799A

EXHIBITS

		PRINTED PAGE
90A	Minutes of meeting between the Union and Management at Akron, Ohio, dated April 16, 1963 (TM-45).....	1802A
91A	Lee letter to Local 227, dated May 1, 1963 from A.E. Barkett.....	1814A
92A	Lee letter to Local 227, dated June 25, 1963 enclosing memorandum of understanding re 7-day notice of extension of working agreement	1816A
93A	Lee letter to Local 227, dated July 3, 1963, enclosing statement by M.M. Clairmont, dated July 3, 1963.....	1821A
94A	Union charge against Lee to NLRB, dated July 8, 1963 re Refusal to bargain.....	1841A
95A	Amended Union charge against Lee to NLRB dated August 21, 1963, re Refusal to bargain.....	1841A-1
97A	Union Grievance #260, dated January 8, 1965 re Special Distribution Payments.....	1842A
98A	Revised Company Proposals for collective bargaining agreement dated June 7, 1963, and redated June 14, 1963.....	1845A
99A	Union notes of negotiation session between Lee and Local 227 on May 29, 1963.....	1881A
100A	Union notes of negotiation session between Lee and Local 227 on June 28, 1963.....	1886A
101A	Union notes of negotiation session between Lee and Local 227 on July 3, 1963.....	1889A
102A	Union notes of negotiation session between Lee and Local 227 on July 5, 1963.....	1892A
103A	Memorandum of Understanding re company proposal for 7 day notice of extension of working agreement dated June 21, 1963.....	1895A

EXHIBITS

		PRINTED PAGE
107A	Lee Notice of Special Stockholders meeting and Proxy Statement signed by Paul Van Anda, dated January 19, 1962.....	1897A
108A	Lee letter to stockholders dated March 25, 1963, signed by A.A. Garthwaite, Jr.....	1903A
111A	Lee revised proposals for Youngstown Agreement dated July 5, 1963.....	1903A-1
112A	Contract between Aeroquip Corp. and Local 102 amending May 1, 1961 working agreement between Lee and Local 102.....	1903A-6
113A	Complete new working agreement between Aeroquip Corp. and Local 102, dated October 31, 1963 and effective December 21, 1963.....	1903A-14
118A	Proposed amendment to Welfare Agreement, dated June 15, 1962.....	1904A
118A (1)	International Union letter from Oldham to Local 227 dated June 18, 1962.....	1906A
118A (2)	International Union letter from Samels to Local 227, dated June 18, 1962.....	1907A
123A	International Union Research Department Wage Survey, entitled Tires and Tubes dated December 7, 1961.....	1908A
124A	International Union Research Department list of URW Organized Tire Plants compiling average earnings, dated December 11, 1961.....	1915A
125A	Purchase authorization re tread tuber signed by A.A. Garthwaite, Jr., dated February 11, 1963...	1916A
126A	Side Agreement re tire builder key classification seniority status dated January 22, 1963.....	1917A
127A	Union notes of negotiating session between Lee and Local 227 on May 31, 1963.....	1918A

EXHIBITS

		PRINTED PAGE
128A	Union notes of negotiating session between Lee and Local 227 on June 7, 1963.....	1928A
129A	Union notes of negotiating session between Lee and Local 227 on June 11, 1963.....	1935A
130A	Union notes of negotiating session between Lee and Local 227 on June 14, 1963.....	1943A
131A	Union notes of negotiating session between Lee and Local 227 on June 21, 1963.....	1945A
132A	Union notes of negotiating session between Lee and Local 227 on June 24, 1963.....	1948A
133A	Union notes of negotiating session between Lee and Local 227 on June 26, 1963.....	1952A
134A	Union notes of negotiating session between Lee and Local 227 on June 19, 1963.....	1956A
135A	Union notes of negotiating session between Lee and Local 227 on June 27, 1963.....	1960A
136A	Union notes of negotiating session between Lee and Local 227 on July 1, 1963.....	1965A
137A	Union notes of negotiating session between Lee and Local 227 on July 11, 1963 - morning session.....	1968A
138A	Union notes of negotiating session between Lee and Local 227 on July 11, 1963 - afternoon session.....	1971A
139A	Excerpts from Moody's Industrial Manual for the years 1960 - 1964 detailing earnings and financial condition of Lee Rubber and Tire Corp., Cooper Tire and Rubber Co., Mansfield Tire and Rubber Co., and Mohawk Rubber Co.....	1974A

1A

CIVIL DOCKET 66 Civ 1154

UNITED STATES DISTRICT COURT

66 Civ 1154

Jury demand date:

D. C. Form No. 106 Rev.

JUDGE KNAPP

TITLE OF CASE	ATTORNEYS
UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102 an unincorporated association VS LEE NATIONAL CORPORATION	For plaintiff: ~~Steinberg-Clyne-&-Jaffe-80-Wall-Ebry-NYC~~ AUERBACH & LABES 605 Third Ave.NYC. (11-19-69) For defendant: Poletti Freidin Prashker Feldman & Gartne 777 3rd Ave., NYC 10017

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed x	Clerk		4/5/66	Stephen Cl.	15 -	
			4/26/66	S Feldman		15 -
J.S. 6 mailed ✓	Marshal		5/3/74	Anderson	5 -	
			5/4/74	Treas		5 -
Basis of Action:	Docket fee					
breach of collective bargaining agreement, Ins. & Medical agreements.-Declaratory judgmt.	Witness fees					
Action arose at:	Depositions					

66 Civ 1154 United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, et ano vs Lee National Cor

66 Civ

DATE	PROCEEDINGS	Date Order Judgment N
Apr. 22-66	Filed complaint and issued summons.	
Apr.28-66	Filed summons & ret--Served Lee National Corporation 4-25-66	
May 13-66	Filed stip. & order extending time for deft. to answer to 6-1-66-McLean,J.	
May 16-66	Filed deft's notice to take deposition of United Rubber, & United Rubber Local 102.	
May 24-66	Filed stip. & order extending deft's time to answer to 7-1-66-deposition of pltff. to begin 6-9-66-Wyatt,J.	
Jun 7-66	Filed stip & order extending time for Lee Nat'l to ans to 9-1-66--deposition of pltff to 8-9-66--Bryan,J.	
Aug. 10-66	Filed stip.& order that time for deft. to answer extended to 11-2-66 --that date for taking deposition of pltff extended tom 8-9-66 to 10-10-66--Tenney,J.	
Oct. 11-66	Filed stip. & order extending deft's time to answer to 2-2-67--time to take deposition of pltff. is extended to 1-10-67--Cooper,J.	
Jan. 5-67	Filed stip & order extending deft's Lee National Corp time to answer to 3-13-67-the date for the taking of the deposition of the pltffs is extended to 2-15-67-Mansfield, J.	
Jan. 30-67	Filed stip. & order extending deft's time to answer to 4-25-67--pltffs' deposition is adjourned to 3-22-67---Ryan,J.	
Mar. 7-67	Filed stip & order extending deft' Lee National Corp to ans to 5-25-67--pltffs' deposition is adjourned to dated indicated-Metzner, J.	
Mar. 13-67	Filed stip & order extending time of deft to ans to 5-25-67-the taking of deposition of pltffs' is scheduled on dates indicated-Herlands, J.	
Mar. 13-67	Filed stip & order extending time of deft to ans to 6-8-67--the taking of deposition of pltffs' is scheduled on dates indicated-Herlands, J.	
[illegible] 25-67	Filed stip & order extending time of deft to ans to 9-18-67-Wyatt, J.	
[illegible] 25-67	Filed pltff's amended complaint	
[illegible]. 10-67	Filed deft's ANSWER to amended complaint	
[illegible]. 26-67	Filed pltffs' REPLY to counterclaim	PREPARE
[illegible]-69	Filed pltff's NOTE OF ISSUE and statement of readiness.	
[illegible].29-69	Filed order pursuant to calendar rules 6 & 13. Sugarman,CH.J.	
[illegible] 6-69	Filed deft's designation of trial counsel.	
[illegible]. 6-69	Filed pltffs/ designation of trial counsel.	
[illegible].27-69	Filed affidavit by Peyton H. Moss ext. time to file pre-trial memorandum :	
[illegible].27-69	Filed memo-endorsed on affidavit by P.H. Moss: Time extended to 11-24-69. So ordered. McGohey,J.	
[illegible].19-69	Filed consent to substitution of attorneys for pltff Clerk.	
[illegible] 5-69	Filed affdvt of William Auerbach in support of application of extension of time for filing of pre-trial memorandum.	
[illegible] 5-69	Filed affdvt of Peyton H. Moss in support of above affdvt for extension of time for filing of pre-trial memorandum.	
[illegible] 5-69	Filed stip & order that the pre-trial order entered on 9-29-69 be re-dated to 2-5-70--So ordered--Tenney,J.	
[illegible] 30-69	Filed pltff's demand for interrogs, as to deft. Lee Nat'l Corp.	
[illegible] 5- 70	Filed Reply affdvt of Stanley W Taylor, atty for pltffs.	
[illegible] 5-70	Filed affdvt of Peyton H Moss, atty for deft in opposition to pltff's application for order permitting pltffs to move for supplemantary discovery and examination of deft.	
[illegible] 5 -70	Filed pltff's affdvt & notice of motion for order permitting pltffs to move court before motion term for purpose of requesting supplementary discovery and examination of deft and for granting of a continuance of this matter on the Trial calendar pending completion of discovery and examination.	
[illegible] 5- 70	Memo Endorsed on motion papers filed this day, "9L application granted to extent of a motion to compel answers to interrogs (exhibit B to 9L motion papers) and to compel production of pltff's check off list of union members at time of or prior to strikes which are the subject of this controversy. So Ordered- Tenney, J. m/n	

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United States - Lee,

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date of Judgment
Feb 16-70	Filed Pltff's affdvt & Notice of motion for an order compelling deft to answer interrogs & to produce certain records for inspection & copy. - Ret. 2-19-70.	
Feb 18-70	Filed affdvt of Peyton H Moss, atty for deft. in opposition to pltff's application compelling deft to serve answers to interrogs.	
Feb 19-70	Filed Reply affdvt of Stanley W Taylor, atty for pltff's.	
Feb 20-70	Memo Endorsed on motion papers filed 2-16-70, "Settle order on notice in accordance with the Court's ruling following argument." Mansfield, J.	
Mar 4- 70	Filed Order that the pltff's motion is denied and parties to proceed in accordance with the requirements of the pre-trial notice, previously issued, dtd 9-29-69, which has been extended to April 6, 1970. Mansfield, J. m/n	
Mar 12-70	Filed pltff's notice of designation of trial counsel.	
Apr 6- 70	Filed Stip & Order that the time for filing a pre-trial memorandum by the parties be extended to May 21, 70 ----So Ordered: McLean, J.	
May 26-70	Filed affdvt & Stipulation that the time for filing a pre-trial memorandum by the parties be extended to Sept 8-70. So Ordered: Cannella, J.	
July 28-70	Filed Deft's notice of motion & affdvt for summary judgment to dismiss certain counts, etc. returnable Aug 18-70.	
July 28-70	Filed Statement pursuant to Rule 9(g) of the rules of this court, by deft.	
July 28-70	Filed Memorandum in support of deft's motion for summary judgment.	
July 28-70	Filed exhibits to affdvt of William L Ehinrich, in support of deft's motion for summary judgment.	
Aug.18-70	Filed stip to adj. deft's motion for summary judgment ret.8-18-70 to 9-15	
Sept 10-1970	Filed Affdvt & rule 9(g) statement in opposition to motion for summary judgment.	
Oct 4-70	Filed Deft's amended statement pursuant to Rule 9 (g) of the Rules of this Court.	
Feb 24 71	Filed OPINION # 37631 by Mansfield, J. "**** For the foragoing reasons deft's motion for summary judgment dismissing the 2d Cause of action of the complaint is granted to the extent that pltffs' claim of right to arbitration is dismissed. Otherwise the motion is denied as to the 2d cause of action. Deft's motion for summary judgment dismissing the 3rd cause of action is granted. It is so ordered. Mansfield, J. (mailed notices)	
Feb 25 71	Entered pltffs memorandum of law in opposition to motion for summary judgment. (Filed 10-19-70)	
Feb 25 71	Entered reply memorandum in support of deft's motion for partial summary judgment. (Filed in court 10-20-70)	
Mar 19 71	Filed Memorandum by Mansfield, J. --- "***** The informal application for modification is therefore denied. It is so ordered. Mansfield, J." (modification re: Opinion of 2-22-71)	
May 13 71	Filed in court affdvt of Peyton H. Moss, atty for the deft, re: adjournment of the pre-trial conference.	
Jan 13 72	Filed Consent Pre-Trial Order. Tenney J.	
Jan 13 72	Filed Pre-Trial Memorandum submitted by Deft.	
Jan 13 72	Filed " " " " " Pltffs.	
Dec20-72	Filed Proposed Order with Notice of Settlement and ORDER.- Ordered that the motion of deft for order severing, as to the second cause of action, the trial of the issue of liability from the trial of the issue of damages, and the court ast that hearing having heard counsel for deft in support of the said motion is granted. KNAPP, J. (mn)	
Dec27-72	Filed pltff's notice of names of witnesses.	
Jan23-73	Non-jury trial begun before Judge Knapp.	
Jan24-73	" " " cont'd.	
Jan26-73	" " " " and ajdourned to 2-5-73.	

-over- Page #3

66 Civ 1154 United Rubber, Cork, etal vs. Lee National Corp. 66 Civ 11

DATE	PROCEEDINGS	Date Order Judgment
Jan23-73	Non-jury trial begun before Judge Knapp.	
Jan24-73	" " cont'd.	
Jan25-73	" " "	
Jan26-73	" " " and adj'd to 2-5-73.	
Feb 5-73	" " "	
Feb6- 73	" " "	
Feb7- 73	" " "	
Feb8- 73	" " " and adj'd to 2-13-73.	
Feb13-73	" " "	
Feb14-73	" " " and adj'd to 2-21-73.	
Feb21-73	" " "	
Feb22-73	" " "	
Feb23-73	" " "	
Feb26-73	Cont'd and concluded. Decision reserved. KNAPP,J.	
Apr.3-73	Filed transcript of Record of Proceedings of Jan. 23, 24, 26, and Feb. 5 & 6, 1973.	
Apr.3-73	Filed " " " " " " " Feb. 7,8,13 & 14, 1973.	
May 18,73	Filed OPINION # 39484; KNAPP,J. Defts. Motion to dismiss First Cause of Action and requesting argument on re-Opening as the the second cause of action granted.(N/)	
Apr 3-73	Filed transcript of proceedings dated Feb 21,22,23 and 26, 1973.	
Jun.22-73	Filed transcript of record of proceedings dated 2-23-73.	58
un27-73	Filed Memorandum and Order...In the event pltffs select to proceed in the manner suggested, their counsel are to thorcughly interview Mr. Conway prior to producing him and to decide in advance what questions they intend to ask him, and which atty is to do the questioning. Only one atty for each side will be permitted to question Mr. Conway, and no time will be allowed for between-question conferences of counsel,etd. Bauman,J.	
p.11-73	Filed Supplemental Order: With respect to the memorandum & order, dated 8-27-73,it occurs to me that there may be a need for, clairification on two points. First, in instructing pltff's, counsel to thoroughly interview Mr. Conway, it was not my, intention thereby to imply that deft's counsel should not do, the same. On the contrary, while the court realizes that it, cannot direct any witness to confer with any counsel, the , court would deem it a favor if before trial Mr. Conway could, make himself available to both counsel,etc. Knapp,J. m/n	
p.19-73	Before Knapp,J. Non-Jury trial begun.(Trial cont'd from 2-26-73.	
p.20-73	Trial continued.	
n.21-73	" " , Decision Reserved.	
r.23-73	Filed pltff's memorandum in opposition to deft's motion to dismiss, the second cause of action at the end of pltff's case.	
v. 2-73	Filed OPINION: For the foregoing reasons & for those set forth on , the record at the time of deft's third motion to dismiss, the second cause of action is dismissed & final judgment will be entered dismissing the complaint in its entirety. , So ordered. Knapp,J. Mailed notice.(Opinion #39975)	64
ov.7-73	Filed Judgment: Order that deft. have judgment against the pltff,s dismissing the complaint in its entirety. Judgment Ent. Clerk Mailed notice. Ent. 11-9-73.	65
Nov 7-73	Filed Judgment-Appearance in opposition noted. Bill of Costs taxed in favor of the deft. in the amount of $450.20, and docketed as Judgment # 74, 035 - Clerk.	
an.15-74	Filed deft's affidavit & notice of motion Re: Taxing costs ret, 1-25-74.	68

Cont;d on page #4

DATE	PROCEEDINGS KNAPP, J.
Jan.8-74	Filed Bill of Costs & Docket as Judgment #74,035 in the sum of $450.20. Appearance in opposition noted. Clerk.
Jan.15-74	Filed stip & order that time for certifying & transferring the record on appeal is ext. to 2-14-74. Knapp,J.
Jan.24-74	Filed transcript of record of proceedings, dated 7/2-11/73
Feb.7-74	Filed Memorandum & order: The deft. now moves for review of the bill of costs as taxed against pltff. by the Clerk of this court. The court will allow the cost of the transcript to be taxed at the regular rate, but not at the daily rate. So ordered. Knapp,J. m/n
Dec 3-73	Filed pltffs notice of appeal from the final judgment dismissing co...plt. on Nov. 7-73 and the order of Nov 2-73 dismissing the 2nd cause of action. (Mailed copy to Poletti Freidin)
Feb.13-74	Filed Order that the application to tax the court reporter's charges for reporting & transcribing the record of the trial, including the cost at regular rate of the original copy, provided the court & one copy for deft's counsel amounting, to $3,176.30 is hereby granted. Clerk of this court is directed, to insert said sum in the judgment herein. Knapp,J.
Feb.19-74	Filed stip & order that time for indexing, certifying & transferring record on appeal is ext. from 2-14-74 to 3-4-74, So ordered. Knapp,J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,	:	Civil Action No.
Plaintiffs,	:	COMPLAINT
vs.	:	
LEE NATIONAL CORPORATION,	:	
Defendant.	:	

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO (hereinafter referred to as the International Union), an unincorporated association, having its principal office at 87 South High Street, Akron, Ohio, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102 (hereinafter referred to as Local 102), an unincorporated association, having its principal office in care of its President, Mr. William Oeler, 20 James Street, Columbiana, Ohio, for their complaint against the defendant say:

FIRST CAUSE OF ACTION

Plaintiff Local 102, for its complaint, says:

1. This Court has jurisdiction of this action under 29 U.S.C. Section 185 (also known as Section 301 of the Labor-Management Relations Act of 1947) and Sections 1331 and 1337 of Title 28 of the United States Code; and the United States Constitution, Article I, Section 8, empowering Congress to regulate commerce among the states and to make all laws necessary and proper for carrying into execution the said power and other provisions of said Constitution and the amendments thereto.

2. Defendant was originally incorporated under the name of Lee Rubber & Tire Corporation and on or about February 26, 1964, changed its name to Lee National Corporation.

3. At all times material hereto, until December 20, 1963, defendant was the owner and operator of a plant in Youngstown, Ohio, which plant was known as the Republic Rubber Division of defendant and was there engaged in interstate commerce within the meaning of the statutes and constitutional provisions herein cited. On December 20, 1963, defendant sold said plant.

4. Local 102 is an unincorporated local organization and represents employees in an industry affecting commerce, all as defined in the National Labor Relations Act, as amended,

and the Labor-Management Relations Act of 1947. Local 102 was, for many years last past, and at all times material hereto, the certified and recognized collective bargaining agent for all the hourly and piece-work production and maintenance employees of the said plant, including the inspectors, factory clerical workers, and laboratory testers, and excluding general office workers, foremen, assistant foremen, heads of the experimental research department, salaried chemists, and time-study men.

5. Local 102 on July 3, 1961, effective May 1, 1961, entered into a collective bargaining agreement with the Republic Division of defendant prescribing rates of pay, wages, hours of employment and other conditions of employment for the employees in the above-described collective bargaining unit; said contract also included provisions for the filing of grievances and the processing thereof through successive stages, and further provided that in the event any dispute or grievance had not been adjusted to the satisfaction of the parties, then such unsettled grievance or dispute could be submitted to a Board of Arbitration in a manner therein specified. A copy of said agreement is annexed hereto, marked Exhibit-1, and made a part hereof.

6. Said agreement expressly provided in Sec. 4(5) that: "In the event either party refuses to submit an issue to arbitration within 10 days after the filing of the notice to arbitrate, then such refusal to arbitrate shall effect a default in favor of the other party."

7. Said agreement was, by consent of the parties, extended and continued in force and effect until August 6, 1963, at which time Local 102 went on strike which remained in effect until October 31, 1963.

8. During June and July 1963, Local 102, pursuant to the terms and conditions of the 1961 collective bargaining agreement, delivered to defendant a number of grievances in accordance with the procedure contained in Sec. 2 of the collective bargaining agreement, Exhibit-1 hereto. A list of said grievances is attached hereto, marked Exhibit-2, and made a part hereof.

9. On October 31, 1963, Local 102 and defendant entered into a new collective bargaining agreement succeeding the one hereinabove referred to and containing substantially similar provisions in all parts material hereto other than the date of commencement and expiration thereof.

10. At sundry times defendant denied each and every one

of said grievances.

11. On or about November 19, 1963, Local 102 delivered to defendant a grievance claiming a violation of seniority rights of Frank A. Maizel. On or about December 13, 1963, defendant denied this grievance.

12. On or about December 13, 1963, Local 102 delivered to defendant two (2) letters demanding arbitration of all the grievances named in Exhibit-2, attached hereto.

13. Defendant refused to arbitrate the said grievances with Local 102.

14. By said refusal, defendant, in accordance with Sec. 3(5) of the collective bargaining agreement, which is attached hereto, marked Exhibit-1, effected a default in favor of Local 102 regarding all said grievances.

15. On or about February 6, 1964, Local 102 delivered to defendant a letter demanding arbitration of the aforesaid grievance involving Maizel.

16. Defendant refused to arbitrate the Maizel grievance.

17. By said refusal, defendant, in accordance with Sec. 3(5) of the collective bargaining agreement, which is attached hereto, marked Exhibit-1, effected a default in favor of Local 102 regarding the Maizel grievance.

18. Defendant has refused and still refuses either to arbitrate the aforesaid grievances or to pay the same in accordance with its default. By said actions the defendant has violated the aforesaid agreements of July 3, 1961, and October 31, 1963.

WHEREFORE, plaintiff Local 102 demands judgment on this First Cause of Action:

1. Declaring that the aforesaid grievances were, each and every one of them, grievances which Local 102 was entitled to have arbitrated in accordance with the provisions of the agreements of July 3, 1961, and October 31, 1963.

2. Declaring that defendant has breached the agreements of July 3, 1961, and October 31, 1963, by refusing to recognize said grievances and process them in accordance with the aforesaid agreements.

3. Declaring that the defendant by its refusal to submit to arbitration within 10 days after the filing with it of the notice to arbitrate said grievances thereby effected a default and defaults in favor of Local 102.

4. Awarding appropriate damages.

5. In the alternative, and only if the next preceding demand for judgment is denied, then ordering the

defendant to participate in the selection of an arbitrator in accordance with the appropriate contract procedure, and, upon failure of the defendant to do so within a reasonably short period, to be fixed by the Court, having the Court or a Court-designated Master perform the actions necessary to be performed by the defendant in the selection of a Board of Arbitration to hear and determine the aforesaid grievances of Local 102.

6. Awarding such other and further relief as may be appropriate including costs and counsel fees.

SECOND CAUSE OF ACTION

Plaintiff International Union, for its complaint, says:

1. International Union repeats the allegations of paragraphs 1 and 2 of the First Cause of Action.

2. Defendant, at all times material hereto, was the owner and operator of a plant in Conshohocken, Pennsylvania, where it was engaged in interstate commerce within the meaning of the statutes and constitutional provisions herein cited.

3. Plaintiff International Union is, and at all times material hereto was, an unincorporated labor organization rep-

resenting employees in an industry affecting commerce, as defined in the National Labor Relations Act, as amended, and the Labor-Management Relations Act of 1947. Plaintiff for the more convenient servicing of the needs of its members, charters local unions consisting, in most instances, of the employees in a bargaining unit in a particular plant.

4. At all times material hereto, there was in existence, duly chartered by tne International Union, a local union thereof known as Local No. 227 which was the certified and recognized collective bargaining agent for all production and maintenance employees and test-car drivers at the aforesaid plant of defendant, but excluding certain enumerated categories of employees.

5. On or about July 1, 1965, the defendant ceased operations and then sold the aforementioned plant and Local 227 ceased to represent the bargaining unit of employees employed by defendant; and, thereafter, on November 4, 1965, for good cause, the International Executive Board of the International Union, pursuant to the Constitution of said International Union, dissolved said Local 227 and revoked the charter of said local union and thereupon all assets of said Local 227, including all rights and causes of action became vested in

the International Union.

6. Local 227, on June 30, 1961, entered into a collective bargaining agreement with defendant (hereinafter referred to as the "Working Agreement") prescribing rates of pay, wages, hours of employment and other conditions of employment for the employees in the above-described collective bargaining unit; said contract also included provisions for the filing of grievances and the processing thereof through successful stages, and further provided that in the event any dispute or grievance had not been adjusted to the satisfaction of the parties, then such unsettled grievance or dispute could be submitted to a Board of Arbitration in a manner therein specified.

7. On or about June 30, 1961, Local 227 and defendant had entered into an agreement for pension, service awards and insurance benefits (hereinafter referred to as the "Insurance Benefits Agreement") for employees in the bargaining unit aforesaid, including a pension plan, service awards and special distributions on discontinuance of operations, insurance benefits of various kinds, including hospitalization, surgical-medical, health and accident benefits, group life insurance and nonoccupational accidental death and dismember-

ment insurance, supplemental workmen's compensation benefits, etc. Said agreement expressly provided, among other things, (a) that it should become effective on July 1, 1961, and continue in force until June 30, 1966, and thereafter should renew itself for yearly periods unless written notice of desire to amend was given by either party to the other; (b) that "any termination of the Working Agreement, in accordance with the provisions thereof, shall not affect the duration of this agreement (of June 30, 1961)"; (c) it provided, in several places, that in the event of any dispute or difference arising therefrom, the same should be processed in accordance with the grievance and arbitration procedure contained in the Working Agreement, thereby referring to the collective bargaining agreement dated June 30, 1961, aforesaid, between the parties. A true copy of said Insurance Benefits Agreement is attached hereto, marked Exhibit-3, and made a part hereof.

8. The said Insurance Benefits Agreement was amended in minor matters by agreement dated December 17, 1962, a true copy of which is attached hereto, marked Exhibit-4, and made a part hereof.

9. On or about December 14, 1964, the defendant sent to all its employees and retired former employees a letter

advising that the defendant had "decided to discontinue permanently all tire manufacturing operations at the Conshohocken plant," and further stating that "we regret that we are not able to provide employment any longer in connection with the operations of the plant in the community of Conshohocken."

10. On or about December 14, 1964, the defendant sent letters to all the employees in the collective bargaining unit represented by Local 227, the body of which read as follows:

> "As a result of the decision to discontinue permanently all tire manufacturing operations at the company's Conshohocken, Pennsylvania plant, we regret to advise you that your connection with Lee National Corporation is hereby being severed and your employment is hereby terminated effective immediately. Accordingly, your records are being marked as permanently closed."

11. On or about January 8, 1965, Local 227 delivered to defendant its Grievance No. 260, the substance of which read as follows:

> "This grievance is being filed pursuant to Article II, Section VI of the Agreement for Pension, Service Award and Insurance Benefits, and titled 'Special Distribution and Discontinuance of Operations.' We are asking that the Company pay a Special Distribution for all of our employees terminated as a result of the Discontinuance of Operations by the Lee National Corporation. This Special Distribution is further spelled out in the above Section VI."

12. By two (2) letters dated January 11, 1965, Local 227 transmitted to defendant the individually signed requests of substantially all the employees in the bargaining unit, the body of which read as follows:

> "I, _____, elect under Article II, Section VI of the Agreement for Pension, Service Award and Insurance Benefits, and titled Special Distributions on Discontinuance of Operations, to receive a special distribution in lieu of any defered vested pension I am entitled to under the pension plan."

13. By letter dated January 19, 1965 (a true copy of which is attached hereto, marked Exhibit-5, and made a part hereof), defendant denied the right of Local 227 to file the aforesaid grievance and asserted that the grievance was entirely without merit.

14. By letter dated January 19, 1965, defendant returned to Local 227 the two letters dated January 11, 1965, mentioned in par. 12, above, the body of said letter from defendant read as follows:

> "We are returning the 2 enclosed letters signed by you since they are invalid, pointless and devoid of any force or effect."

15. By letter dated January 25, 1965 (a true copy of which is attached hereto, marked Exhibit-6, and made a part

hereof), to each employee mentioned in the aforementioned letters dated January 11, 1965, referred to in par. 12, supra, the defendant rejected said claims.

16. On or about January 21, 1965, Local 227 delivered to defendant its Grievance No. 261, the body of which read as follows:

> "This grievance is being filed pursuant to Article II, Section VI of the Agreement for Pension, Service Award and Insurance Benefits, and titled 'Special Distribution and Discontinuance of Operations.' We are asking that the Company pay a Special Distribution for all our employees terminated as a result of the Discontinuance of Operations by the Lee National Corporation. This Special Distribution is further spelled out in the above Section VI."

17. By letter dated January 28, 1965, the defendant rejected said grievance, the body of said letter reading as follows:

> "We are returning the communication of January 21, 1965 signed by you and certain other individuals, since it is pointless and serves no practical purpose for the reasons expressed in our letter to you dated January 19, 1965."

18. The defendant has ever since then refused to recognize the validity of the aforesaid grievances of Local 227 and has refused to process said grievances in accordance with

the procedure specified in the Insurance Benefits Agreement, incorporating by reference the grievance and arbitration procedure contained in the Working Agreement, and has refused to concede that such procedure is applicable to the aforesaid grievance of Local 227; and thereby has waived the need for exhausting the prearbitration steps of said grievance procedure and has definitely indicated that it will not participate in the selection of a Board of Arbitration as provided for by the agreements.

19. The said Working Agreement of June 30, 1961, provided, in pertinent part, in Section 3.02, as follows:

> "In the event a complaint, grievance or dispute filed by either of the parties to this agreement remains unsettled upon conclusion of negotiations as outlined in Section 3.01 above, either party may within two (2) weeks thereafter notify the other party in writing of its desire to submit the matter to a Board of Arbitration in the following manner:
>
> "Within five (5) working days from the receipt of such notice the parties will meet and have an understanding of the question or questions to be submitted for arbitration and each party shall, at such meeting, submit to the other party the name of its arbitrator. The two arbitrators so chosen shall within three (3) days jointly request the American

Arbitration Association, Philadelphia, Pa., to appoint the Chairman of the Board of Arbitration. The Arbitration Board so selected shall fix a hearing date, meet and consider the complaint, and, if possible, render a decision within two (2) weeks after completing hearing, which decision shall be final and binding on all parties. The Arbitration Board may interpret this agreement and apply it to the particular case presented to it, but shall, however, have no authority to add to, or subtract from, or modify the terms of this agreement. Each party shall be responsible for the costs of its arbitrator and shall share equally the costs of the third arbitrator.

"(1) It is understood that the question of a general or plantwide wage adjustment cannot be submitted to a Board of Arbitration for settlement."

20. The International Union desires and is entitled to have the aforesaid grievances of Local 227 arbitrated before a Board of Arbitration established as aforesaid.

21. Defendant by refusing to process the grievances or to participate in the selection of a Board of Arbitration has violated the aforesaid Insurance Benefits Agreement of June 30, 1961.

WHEREFORE, plaintiff International Union demands judgment on this Second Cause of Action:

1. Declaring that it is entitled to have arbitrated Grievances Nos. 260 and 261 in accordance with the provisions

of the Insurance Benefits Agreement of June 30, 1961, incorporating by reference the grievance and arbitration provision of the Working Agreement of June 30, 1961.

2. Declaring that the defendant has breached the Insurance Benefits Agreement of June 30, 1961, by refusing to recognize and process said grievances in accordance with the aforesaid agreements.

3. Ordering the defendant to participate in the selection of an arbitrator in accordance with the appropriate contract procedure, and, upon failure of the defendant to do so within a reasonably short period, to be fixed by the Court, having the Court or a Court-designated Master perform the actions necessary to be performed by the defendant in the selection of a Board of Arbitration to hear and determine the aforesaid grievances of Local 227.

4. In the alternative, in the event that plaintiff International Union is not entitled to arbitrate the aforesaid grievances, then International Union seeks judgment in the sum of $100,000.00.

5. Awarding such other and further relief as may be appropriate, including costs and a counsel fee.

THIRD CAUSE OF ACTION

Plaintiff International Union, for its complaint, says:

1. International Union repeats the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 of the Second Cause of Action.

2. In and by Art. III, Insurance Program, subdivision I, Hospitalization, Surgical-Medical and Health and Accident, par. J (p. 20 of Exhibit-3, attached hereto, and made a part hereof), defendant obligated itself to continue certain hospital, surgical-medical and health and accident coverage and benefits for its retired employees.

3. In and by said agreement defendant further agreed in Art. III, subdivision II, par. C to continue life insurance coverage for retired employees in the amount of $2,250.00 according to the specifics therein stated.

4. By letter dated September 18, 1964, defendant advised its retired employees that it was putting into effect on a voluntary basis a modified group insurance coverage for the retired former employees of the bargaining unit.

5. International Union repeats the allegations of paragraph 9 of the Second Cause of Action.

6. By letter dated May 12, 1965, defendant advised its retired employees that effective June 1, 1965, it was discontinuing the voluntary group life and health insurance coverage theretofore maintained for retired former employees.

7. Local 227 had attempted to file Grievances Nos. 260 and 261 with regard to employees in its bargaining unit, and defendant had denied the right of the Union to file said grievances and had refused to process them or to participate in the selection of a Board of Arbitration. By reason of the defendant's conduct with regard to those grievances it was apparent that it would have been futile for Local 227 to attempt to file any grievance, or grievances, concerning the discontinuance of the voluntary group life and health insurance coverage for retired former employees; and by its aforesaid conduct defendant waived any requirement in any of the contracts, or agreements, that any grievance be filed with respect to said claims involving retired former employees, and that any disputes relative thereto be arbitrated.

WHEREFORE, plaintiff International Union demands judgment on this Third Cause of action:

1. Declaring that the defendant breached the Insurance Benefits Agreement of June 30, 1961, as amended, by discontinuing the voluntary group life and health insurance

coverage theretofore maintained for retired former employees.

2. Judgment in the sum of $100,000.00.

3. In the alternative, in the event that plaintiff International Union is not entitled to an immediate judgment for damages, but is required to arbitrate either the right thereto or the amount thereof, then ordering the defendant and International Union to arbitrate the said issues and directing the defendant to participate in the selection of an arbitrator in accordance with the appropriate contract procedure, and, upon failure of the defendant to do so within a reasonably short period, to be fixed by the Court, having the Court or a Court-designated Master perform the actions necessary to be performed by the defendant in the selection of a Board of Arbitration to hear and determine the questions involved in this Third Cause of Action.

4. Awarding such other and further relief as may be appropriate, including costs and counsel fees.

STEINBERG, CLYNE & JAFFE
Attorneys for Plaintiffs
By:

_____

Alfred Jaffe
A Member of the Firm
Office and Post Office Address
80 Wall Street
New York 5, New York

ROTHBARD, HARRIS & OXFELD
Of Counsel with Plaintiffs
744 Broad Street
Newark, New Jersey 07102

E X H I B I T - 1

COPY OF WORKING AGREEMENT BETWEEN

LOCAL 102 AND REPUBLIC RUBBER DIVISION

DATED JULY 3, 1961 - EFFECTIVE MAY 1, 1961

SEE - EXHIBIT #1

IN THE RECORD

(NOT REPRODUCED IN THE APPENDIX)

E X H I B I T - 2

LIST OF GRIEVANCES PRESENTED BY LOCAL 102

	Date	Subject Matter
1.	6/21/63	- 1 week forced vacation in March and 2-day layoff June 25 and 26 - Anna Brinoke and Leo Dietz.
2.	6/27/63	- 1 week forced vacation in March and layoff week of June 23 - Josephine P. Cocchim and Leo Dietz.
3.	6/25/63	- Tony Levinsky re female employees of press room.
4.	6/28/63	- Floyd Jones et als. - 2-day layoff June 24 and June 25.
5.	6/28/63	- Molded hose men; Long Hose; borrowed to work in FGW between June 1 and July 1.
6.	6/28/63	- Leona Dieter - 2-day layoff June 24 and 25.
7.	6/28/63	- Average earnings for all men of Cal. Dept. Fri. June 21 to June 29,1963 - Clarence Desh.
8.	7/15/63	- Male and female employees of hand room, tube machines and solid tire.
9.	7/5/63	- Re N. Emanuel and R. Gibbs.
10.	(?)	- Press room - Week of June 24.
11.	7/12/63	- Helen Berletic.
12.	7/8/63	- Wire Braid employees (N. Kutan, et als.) sent throughout plant.
13.	7/8/63	- July 1, Wire Braid, etc.; males (F. Jones et als.)
14.	7/8/63	- T. Diana re July 2, 3, and 5 and F. Jones re July 2 and 5.
15.	7/3/63	- Belt and Packing Dept. - Malcolm McCliment.

E X H I B I T - 2

E X H I B I T - 3

COPY OF WELFARE AGREEMENT COVERING PENSION, SERVICE AWARD AND INSURANCE BENEFITS BETWEEN LOCAL 227 AND LEE RUBBER AND TIRE CORP., DATED JUNE 30, 1961

SEE - JOINT APPENDIX

EXHIBIT BOOK - DOC. #36

E X H I B I T - 4

COPY OF AMENDMENT TO WELFARE AGREEMENT

COVERING PENSION, SERVICE AWARD AND INSURANCE BENEFITS,

DATED DECEMBER 17, 1962 BETWEEN LOCAL

227 AND LEE RUBBER AND TIRE CORP.

SEE - JOINT APPENDIX

EXHIBIT BOOK - DOC. #37

EXHIBIT - 5

LETTER FROM LEE NATIONAL CORP. TO LOCAL 227

DATED JANUARY 19, 1962, REJECTING ALLEGED

GRIEVANCES BASED ON REFUSAL TO PAY SEVERANCE BENEFITS

SEE - EXHIBIT #53

IN THE RECORD

(NOT REPRODUCED IN THE APPENDIX)

E X H I B I T - 6

FORM LETTER FROM LEE NATIONAL CORP.

TO ALL EMPLOYEES, DATED JANUARY 25, 1965,

REJECTING INDIVIDUAL CLAIMS FOR SEVERANCE BENEFITS

SEE - EXHIBIT #53

IN THE RECORD

(NOT REPRODUCED IN THE APPENDIX)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association, Plaintiffs, vs. LEE NATIONAL CORPORATION, Defendant.	Civil Action No. 66 Civ. 1154 AMENDED COMPLAINT

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO (hereinafter referred to as the International Union), an unincorporated association, having its principal office at 87 South High Street, Akron, Ohio, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102 (hereinafter referred to as Local 102), an unincorporated association, having its principal office in care of its President, Mr. William Oeler, 20 James Street, Columbiana, Ohio, for their

complaint against the defendant say:

FIRST CAUSE OF ACTION

Plaintiff Local 102, for its complaint, says:

1. This Court has jurisdiction of this action under 29 U.S.C. Section 185 (also known as Section 301 of the Labor-Management Relations Act of 1947) and Sections 1331 and 1337 of Title 28 of the United States Code; and the United States Constitution, Article I, Section 8, empowering Congress to regulate commerce among the states and to make all laws necessary and proper for carrying into execution the said power and other provisions of said Constitution and the amendments thereto.

2. Defendant was originally incorporated under the name of Lee Rubber & Tire Corporation and on or about February 26, 1964, changed its name to Lee National Corporation.

3. At all times material hereto, until December 20, 1963, defendant was the owner and operator of a plant in Youngstown, Ohio, which plant was known as the Republic Rubber Division of defendant and was there engaged in interstate commerce within the meaning of the statutes and constitutional provisions herein cited. On December 20, 1963, defendant sold said plant.

4. Local 102 is an unincorporated local organization and represents employees in an industry affecting commerce, all as defined in the National Labor Relations Act, as amended, and the Labor-Management Relation; Act of 1947. Local 102 was, for many years last past, and at all times material hereto, the certified and recognized collective bargaining agent for all the hourly and piece-work production and maintenance employees of the said plant, including the inspectors, factory clerical workers, and laboratory testers, and excluding general office workers, foremen, assistant foremen, heads of the experimental research department, salaried chemists, and timestudy men.

5. Local 102 on July 3, 1961, effective May 1, 1961, entered into a collective bargaining agreement with the Republic Rubber Division of defendant prescribing rates of pay, wages, hours of employment and other conditions of employment for the employees in the above-described collective bargaining unit; said contract also included provisions for the filing of grievances and the processing thereof through successive stages, and further provided that in the event any dispute or grievance had not been adjusted to the satisfaction of the parties, then such unsettled grievance or dispute

could be submitted to a Board of Arbitration in a manner therein specified. A copy of said agreement is annexed hereto, marked Exhibit-1, and made a part hereof.

6. Said agreement expressly provided in Sec. 4(5) that: "In the event either party refuses to submit an issue to arbitration within 10 days after the filing of the notice to arbitrate, then such refusal to arbitrate shall effect a default in favor of the other party."

7. Said agreement was, by consent of the parties, extended and continued in force and effect until August 6, 1963, at which time Local 102 went on strike which remained in effect until October 31, 1963.

8. During June and July 1963, Local 102, pursuant to the terms and conditions of the 1961 collective bargaining agreement, delivered to defendant a number of grievances in accordance with the procedure contained in Sec. 2 of the collective bargaining agreement, Exhibit-1 hereto. A list of said grievances is attached hereto, marked Exhibit-2, and made a part hereof.

9. On October 31, 1963, Local 102 and defendant entered into a new collective bargaining agreement succeeding the one hereinabove referred to and containing substantially similar

provisions in all parts material hereto other than the date of commencement and expiration thereof.

10. At sundry times defendant denied each and every one of said grievances.

11. On or about November 19, 1963, Local 102 delivered to defendant a grievance claiming a violation of seniority rights of Frank A. Maizel. On or about December 13, 1963, defendant denied this grievance.

12. On or about December 13, 1963, Local 102 delivered to defendant two (2) letters demanding arbitration of all the grievances named in Exhibit-2, attached hereto.

13. Defendant refused to arbitrate the said grievances with Local 102.

14. By said refusal, defendant, in accordance with Sec. 3(5) of the collective bargaining agreement, which is attached hereto, marked Exhibit-1, effected a default in favor of Local 102 regarding all said grievances.

15. On or about February 6, 1964, Local 102 delivered to defendant a letter demanding arbitration of the aforesaid grievance involving Maizel.

16. Defendant refused to arbitrate the Maizel grievance.

17. By said refusal, defendant, in accordance with Sec.

3(5) of the collective bargaining agreement, which is attached hereto, marked Exhibit-1, effected a default in favor of Local 102 regarding the Maizel grievance.

18. Defendant has refused and still refuses either to arbitrate the aforesaid grievances or to pay the same in accordance with its default. By said actions the defendant has violated the aforesaid agreements of July 3, 1961 and October 31, 1963.

WHEREFORE, plaintiff Local 102 demands judgment on this First Cause of Action:

1. Declaring that the aforesaid grievances were, each and every one of them, grievances which Local 102 was entitled to have arbitrated in accordance with the provisions of the agreements of July 3, 1961 and October 31, 1963.

2. Declaring that defendant has breached the agreements of July 3, 1961 and October 31, 1963, by refusing to recognize said grievances and process them in accordance with the aforesaid agreements.

3. Declaring that the defendant by its refusal to submit to arbitration within 10 days after the filing with it of the notice to arbitrate said grievances thereby effected a default and defaults in favor of Local 102.

4. Awarding appropriate damages.

5. In the alternative, and only if the next preceding demand for judgment is denied, then ordering the defendant to participate in the selection of an arbitrator in accordance with the appropriate contract procedure, and, upon failure of the defendant to do so within a reasonably short period, to be fixed by the Court, having the Court or a Court-designated Master perform the actions necessary to to be performed by the defendant in the selection of a Board of Arbitration to hear and determine the aforesaid grievances of Local 102.

6. Awarding such other and further relief as may be appropriate including costs and counsel fees.

SECOND CAUSE OF ACTION

Plaintiff International Union, for its complaint, says:

1. International Union repeats the allegations of paragraphs 1 and 2 of the First Cause of Action.

2. Defendant, at all times material hereto, was the owner and operator of a plant in Conshohocken, Pennsylvania, where it was engaged in interstate commerce within the meaning of the statutes and constitutional provisions herein cited.

3. Plaintiff International Union is, and at all times material hereto was, an unincorporated labor organization representing employees in an industry affecting commerce, as defined in the National Labor Relations Act, as amended, and the Labor-Management Relations Act of 1947. Plaintiff for the more convenient servicing of the needs of its members, charters local unions consisting, in most instances, of the employees in a bargaining unit in a particular plant.

4. At all times material hereto, there was in existence, duly chartered by the International Union, a local union thereof known as Local No. 227 which was the certified and recognized collective bargaining agent for all production and maintenance employees and test-car drivers at the aforesaid plant of defendant, but excluding certain enumerated categories of employees.

5. Local 227, on June 30, 1961, entered into a collective bargaining agreement with defendant (hereinafter referred to as the "Working Agreement") prescribing rates of pay, wages, hours of employment and other conditions of employment for the employees in the above-described collective bargaining unit; said contract also included provisions for the filing of grievances and the processing thereof through

successful stages, and further provided that in the event any dispute or grievance had not been adjusted to the satisfaction of the parties, then such unsettled grievance or dispute could be submitted to a Board of Arbitration in a manner therein specified.

6. On or about June 30, 1961, Local 227 and defendant had entered into an agreement for pension, service awards and insurance benefits (hereinafter referred to as the "Insurance Benefits Agreement") for employees in the bargaining unit aforesaid, including a pension plan, service awards and special distributions on discontinuance of operations, insurance benefits of various kinds, including hospitalization, surgical-medical, health and accident benefits, group life insurance and nonoccupational accidental death and dismemberment insurance, supplemental workmen's compensation benefits, etc. Said agreement expressly provided, among other things, (a) that it should become effective on July 1, 1961, and continue in force until June 30, 1966, and thereafter should renew itself for yearly periods unless written notice of desire to amend was given by either party to the other; (b) that "any termination of the Working Agreement, in accordance with the provisions thereof, shall not affect the duration of this

agreement (of June 30, 1961)"; (c) it provided, in several places, that in the event of any dispute or difference arising therefrom, the same should be processed in accordance with the grievance and arbitration procedure contained in the Working Agreement, thereby referring to the collective bargaining agreement dated June 30, 1961, aforesaid, between the parties. A true copy of said Insurance Benefits Agreement is attached hereto, marked Exhibit-3, and made a part hereof.

7. The said Insurance Benefits Agreement was amended in minor matters by agreement dated December 17, 1962, a true copy of which is attached hereto, marked Exhibit-4, and made a part hereof.

8. The collective bargaining agreement expired on June 30, 1963. On July 17, 1963 the employees represented by Local 227 at defendant's plant in Conshohocken, Pennsylvania commenced a strike which was never settled with defendant. No new collective bargaining agreement was ever entered into by the defendant with either plaintiff with regard to the employees in said bargaining unit. In fact and in effect said strike constituted a complete and permanent discontinuance of all operations at the plant within the meaning of

Article II, Section VI, Special Distributions on Discontinuance of Operations of the December 17, 1962 Amendment to the aforesaid Insurance Benefits Agreement.

9. On or about December 14, 1964, the defendant sent to all its employees and retired former employees a letter advising that the defendant had "decided to discontinue permanently all tire manufacturing operations at the Conshohocken plant," and further stating that "we regret that we are not able to provide employment any longer in connection with the operations of the plant in the community of Conshohocken." This letter constituted merely a recognition of the fact that operations had actually ceased at said plant as far back as July 17, 1963.

10. On or about December 14, 1964, the defendant sent letters to all the employees in the collective bargaining unit represented by Local 227, the body of which read as follows:

> "As a result of the decision to discontinue permanently all tire manufacturing operations at the company's Conshohocken, Pennsylvania plant, we regret to advise you that your connection with Lee National Corporation is hereby being severed and your employment is hereby terminated effective immediately. Accordingly, your records are being marked as permanently closed."

11. On or about January 8, 1965, Local 227 delivered to defendant its Grievance No. 260, the substance of which read as follows:

> "This grievance is being filed pursuant to Article II, Section VI of the Agreement for Pension, Service Award and Insurance Benefits, and titled 'Special Distribution and Discontinuance of Operations.' We are asking that the Company pay a Special Distribution for all of our employees terminated as a result of the Discontinuance of Operations by the Lee National Corporation. This Special Distribution is further spelled out in the above Section VI."

12. By two (2) letters dated January 11, 1965, Local 227 transmitted to defendant the individually signed requests of substantially of the employees in the bargaining unit, the body of which read as follows:

> "I, _____, elect under Article II, Section VI of the Agreement for Pension, Service Award and Insurance Benefits, and titled Special Distributions on Discontinuance of Operations, to receive a special distribution in lieu of any defered vested pension I am entitled to under the pension plan."

13. By letter dated January 19, 1965 (a true copy of which is attached hereto, marked Exhibit-5, and made a part hereof), defendant denied the right of Local 227 to file the aforesaid grievance and asserted that the grievance was

entirely without merit.

14. By letter dated January 19, 1965, defendant returned to Local 227 the two letters dated January 11, 1965, mentioned in par. 12, above, the body of said letter from defendant read as follows:

> "We are returning the 2 enclosed letters signed by you since they are invalid, pointless and devoid of any force or effect."

15. By letter dated January 25, 1965 (a true copy of which is attached hereto, marked Exhibit-6, and made a part hereof), to each employee mentioned in the aforementioned letters dated January 11, 1965, referred to in par. 12, supra, the defendant rejected said claims.

16. On or about January 21, 1965, Local 227 delivered to defendant its Grievance No. 261, the body of which read as follows:

> "This grievance is being filed pursuant to Article II, Section VI of the Agreement for Pension, Service Award and Insurance Benefits, and titled 'Special Distribution and Discontinuance of Operations.' We are asking that the Company pay a Special Distribution for all our employees terminated as a result of the Discontinuance of Operations by the Lee National Corporation. This Special Distribution is further spelled out in the above Section VI."

17. By letter dated January 28, 1965, the defendant rejected said grievance, the body of said letter reading as follows:

> "We are returning the communication of January 21, 1965 signed by you and certain other individuals, since it is pointless and serves no practical purpose for the reasons expressed in our letter to you dated January 19, 1965."

18. The defendant has ever since then refused to recognize the validity of the aforesaid grievances of Local 227 and has refused to process said grievances in accordance with the procedure specified in the Insurance Benefits Agreement, incorporating by reference the grievance and arbitration procedure contained in the Working Agreement, and has refused to concede that such procedure is applicable to the aforesaid grievance of Local 227; and thereby has waived the need for exhausting the prearbitration steps of said grievance procedure and has definitely indicated that it will not participate in the selection of a Board of Arbitration as provided for by the agreements.

19. The said Working Agreement of June 30, 1961, provided, in pertinent part, in Section 3.02, as follows:

> "In the event a complaint, grievance or dispute filed by either of the parties to this agreement remains un-

settled upon conclusion of negotiations as outlined in Section 3.01 above, either party may within two (2) weeks thereafter notify the other party in writing of its desire to submit the matter to a Board of Arbitration in the following manner:

"Within five (5) working days from the receipt of such notice the parties will meet and have an understanding of the question or questions to be submitted for arbitration and each party shall, at such meeting, submit to the other party the name of its arbitrator. The two arbitrators so chosen shall within three (3) days jointly request the American Arbitration Association, Philadelphia, Pa., to appoint the Chairman of the Board of Arbitration. The Arbitration Board so selected shall fix a hearing date, meet and consider the complaint, and, if possible, render a decision within two (2) weeks after completing hearing, which decision shall be final and binding on all parties. The Arbitration Board may interpret this agreement and apply it to the particular case presented to it, but shall, however, have no authority to add to, or subtract from, or modify the terms of this agreement. Each party shall be responsible for the costs of its arbitrator and shall share equally the costs of the third arbitrator.

"(1) It is understood that the question of a general or plantwide wage adjustment cannot be submitted to a Board of Arbitration for settlement."

20. On or about July 1, 1965, the defendant sold the aforementioned plant and Local 227 ceased to represent the bargaining unit of employees previously employed by defendant;

and, thereafter, on November 4, 1965, for good cause, the International Executive Board of the International Union, pursuant to the Constitution of said International Union, dissolved said Local 227 and revoked the charter of said local union and thereupon all assets of said Local 227, including all rights and causes of action became vested in the International Union.

21. The International Union desires and is entitled to have the aforesaid grievances of Local 227 arbitrated before a Board of Arbitration established as aforesaid.

22. Defendant by refusing to process the grievances or to participate in the selection of a Board of Arbitration has violated the aforesaid Insurance Benefits Agreement of June 30, 1961, as amended.

WHEREFORE, plaintiff International Union demands judgment on this Second Cause of Action:

1. Declaring that it is entitled to have arbitrated Grievances Nos. 260 and 261 in accordance with the provisions of the Insurance Benefits Agreement of June 30, 1961, incorporating by reference the grievance and arbitration provision of the Working Agreement of June 30, 1961.

2. Declaring that the defendant has breached the Insurance Benefits Agreement of June 30, 1961, by refusing to

recognize and process said grievances in accordance with the aforesaid agreements.

3. Ordering the defendant to participate in the selection of an arbitrator in accordance with the appropriate contract procedure, and, upon failure of the defendant to do so within a reasonably short period, to be fixed by the Court, having the Court or a Court-designated Master perform the actions necessary to be performed by the defendant in the selection of a Board of Arbitration to hear and determine the aforesaid grievances of Local 227.

4. In the alternative, in the event that plaintiff International Union is not entitled to arbitrate the aforesaid grievances, then International Union seeks judgment in the sum of $2,000,000.00.

5. Awarding such other and further relief as may be appropriate, including costs and a counsel fee.

THIRD CAUSE OF ACTION

Plaintiff International Union, for its complaint, says:

1. International Union repeats the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, and 20 of the Second Cause of Action.

2. In and by Article III, Insurance Program, subdivision I, Hospitalization, Surgical-Medical and Health and

Accident, par. J (p. 20 of Exhibit-3, attached hereto, and made a part hereof), defendant obligated itself to continue certain hospital, surgical-medical and health and accident coverage and benefits for its retired employees.

3. In and by said agreement defendant further agreed in Article III, subdivision II, par. C to continue life insurance coverage for retired employees in the amount of $2,500.00 according to the specifics therein stated.

4. By letter dated September 18, 1964, defendant advised its retired employees that it was putting into effect on a voluntary basis a modified group insurance coverage for the retired former employees of the bargaining unit.

5. International Union repeats the allegations of paragraph 9 of the Second Cause of Action.

6. By letter dated May 12, 1965, defendant advised its retired employees that effective June 1, 1965, it was discontinuing the voluntary group life and health insurance coverage theretofore maintained for retired former employees.

7. Local 227 had attempted to file Grievances Nos. 260 and 261 with regard to employees in its bargaining unit, and defendant had denied the right of the Union to file said grievances and had refused to process them or to participate

in the selection of a Board of Arbitration. By reason of the defendant's conduct with regard to those grievances it was apparent that it would have been futile for Local 227 to attempt to file any grievance, or grievances, concerning the discontinuance of the voluntary group life and health insurance coverage for retired former employees; and by its aforesaid conduct defendant waived any requirement in any of the contracts, or agreements, that any grievance be filed with respect to said claims involving retired former employees, and that any disputes relative thereto be arbitrated.

WHEREFORE, plaintiff International Union demands judgment on this Third Cause of Action:

1. Declaring that the defendant breached the Insurance Benefits Agreement of June 30, 1961, as amended, by discontinuing the voluntary group life and health insurance coverage theretofore maintained for retired former employees.

2. Judgment in the sum of $2,000,000.00.

3. In the alternative, in the event that plaintiff International Union is not entitled to an immediate judgment for damages, but is required to arbitrate either the right thereto or the amount thereof, then ordering the defendant and International Union to arbitrate the said issues and

directing the defendant to participate in the selection of an arbitrator in accordance with the appropriate contract procedure, and, upon failure of the defendant to do so within a reasonably short period, to be fixed by the Court, having the Court or a Court-designated Master perform the actions necessary to be performed by the defendant in the selection of a Board of Arbitration to hear and determine the questions involved in this Third Cause of Action.

4. Awarding such other and further relief as may be appropriate, including costs and counsel fees.

STEINBERG, CLYNE & JAFFE
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By:

_____

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EXHIBIT-1 through EXHIBIT 6 inclusive

Plaintiffs respectfully incorporate by reference herein Exhibits 1, 2, 3, 4, 5 and 6, inclusive, attached to the original Complaint in this action and make the same a part hereof with the same numbers, as if annexed hereto.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs,

vs.

LEE NATIONAL CORPORATION,

Defendant.

ANSWER TO AMENDED COMPLAINT

66 Civ. 1154

Defendant LEE NATIONAL CORPORATION (hereafter "Lee"), by its attorneys, Poletti Freidin Prashker Feldman & Gartner, as and for its answer to the Amended Complaint of plaintiffs UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association (hereafter "International"), and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association (hereafter "Local 102"):

FIRST CAUSE OF ACTION

1ST: Denies each and every allegation set forth in paragraph 1 of said FIRST CAUSE OF ACTION.

2ND: Denies each and every allegation set forth in paragraph 3 of said FIRST CAUSE OF ACTION, except admits that until December 20, 1963 Lee was the owner and operator of a plant in Youngstown, Ohio, which plant was known as "Republic Rubber Division" of Lee (hereafter the "Youngstown Plant"), at which Lee engaged in interstate commerce, and that Lee sold the Youngstown Plant on December 20, 1963.

3RD: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 4 of said FIRST CAUSE OF ACTION and avers that prior to December 20, 1963 Local 102 acted as the certified collective bargaining agent for certain employees at the Youngstown Plant.

4TH: Denies each and every allegation set forth in paragraphs 5 and 6 of said FIRST CAUSE OF ACTION, except admits that on July 3, 1961 Lee entered into an agreement with Local 102, effective May 1, 1961 (hereafter the "Youngstown Working Agreement"), and refers to the Youngstown Working Agreement for its contents.

5TH: Denies each and every allegation set forth in paragraph 8 of said FIRST CAUSE OF ACTION, except admits

that in June and July, 1963 Local 102 delivered to Lee certain documents referring to grievances as therein set forth and refers to said documents for their contents.

6TH: Denies each and every allegation set forth in paragraph 9 of said FIRST CAUSE OF ACTION, except admits that Lee and Local 102 entered into an agreement, dated October 31, 1963, and refers to said agreement for its contents.

7TH: Denies each and every allegation contained in paragraph 10 of said FIRST CAUSE OF ACTION and avers that Lee denied the grievances set forth in the documents referred to in paragraph 5TH of this Answer at various times, but in no instance later than July 22, 1963.

8TH: Denies each and every allegation set forth in paragraph 11 of said FIRST CAUSE OF ACTION, except admits that on or about November 19, 1963 Local 102 delivered to Lee a document referring to a grievance concerning Frank A. Maisel, refers to said document for its contents and avers that Lee denied the grievance referred to in said document on December 13, 1963.

9TH: Neither admits nor denies each and every allegation set forth in paragraph 12 of said FIRST CAUSE OF

ACTION, except admits that on or about December 13, 1963 Local 102 delivered to Lee two letters and refers to said letters for their contents.

10TH: Denies each and every allegation set forth in paragraph 13 of said FIRST CAUSE OF ACTION and avers that Lee rejected for cause the grievances set forth in the documents referred to in paragraph 5TH of this Answer, among other things, by reason of the noncompliance by Local 102 with the provisions of the Youngstown Working Agreement.

11TH: Denies each and every allegation set forth in paragraph 14 of said FIRST CAUSE OF ACTION.

12TH: Neither admits nor denies each and every allegation set forth in paragraph 15 of said FIRST CAUSE OF ACTION, except admits that on or about February 6, 1964 Local 102 delivered to Lee a letter respecting Frank A. Maisel and refers to said letter for its contents.

13TH: Denies each and every allegation set forth in paragraphs 16, 17 and 18 of said FIRST CAUSE OF ACTION.

SECOND CAUSE OF ACTION

14TH: Answering the allegations of paragraph 1

of said SECOND CAUSE OF ACTION, repeats and realleges paragraph 1ST of this Answer.

15TH: Denies each and every allegation set forth in paragraph 2 of said SECOND CAUSE OF ACTION, except admits that prior to on or about December 14, 1964 Lee was the operator of a plant in Conshohocken, Pennsylvania (hereafter the "Conshohocken Plant"), at which it was engaged in interstate commerce, and avers that on July 6, 1965 the Conshohocken Plant was leased by Lee to a third party and on January 17, 1966 the Conshohocken Plant was sold by Lee to a third party and prior to January 17, 1966 Lee was the owner of the Conshohocken Plant premises.

16TH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 3 of said SECOND CAUSE OF ACTION.

17TH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 4 of said SECOND CAUSE OF ACTION and avers that prior to on or about December 14, 1964 United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, Local 227 (hereafter "Local 227"), acted as the

collective bargaining agent for certain employees at the Conshohocken Plant.

18TH: Denies each and every allegation set forth in paragraph 5 of said SECOND CAUSE OF ACTION, except admits that Lee entered into an agreement with Local 227, dated June 30, 1961 (hereafter the "Conshohocken Working Agreement"), and refers to the Conshohocken Working Agreement for its contents.

19TH: Denies each and every allegation set forth in paragraph 6 of said SECOND CAUSE OF ACTION, except admits that Lee entered into an agreement with Local 227, dated June 30, 1961 (hereafter the "Conshohocken Welfare Agreement"), and refers to the Conshohocken Welfare Agreement for its contents.

20TH: Denies each and every allegation set forth in paragraph 7 of said SECOND CAUSE OF ACTION, except admits that Lee and Local 227 entered into an agreement, dated December 17, 1962, amending the Conshohocken Welfare Agreement in major matters, and refers to said agreement for its contents.

21ST: Denies each and every allegation set forth in the fourth sentence of paragraph 8 of said SECOND CAUSE OF ACTION and avers that on July 16, 1963 Local 227 and its members who were then employees at the Conshohocken Plant commenced a strike at the Conshohocken Plant and that all operations at the Conshohocken Plant were not completely and permanently discontinued prior to the termination of the Conshohocken Welfare Agreement.

22ND: Denies each and every allegation set forth in paragraph 9 of said SECOND CAUSE OF ACTION, except admits that Lee sent a letter, dated December 14, 1964, to its employees and retired former employees and refers to said letter for its contents.

23RD: Neither admits nor denies each and every allegation set forth in paragraphs 10, 11, 12, 13, 14, 15, 16 and 17 of said SECOND CAUSE OF ACTION, except admits that Lee sent a letter, dated December 14, 1964, to its employees, that Local 227 delivered a document styled "Grievance No. 260," dated January 8, 1965, that Local 227 delivered two letters, dated January 11, 1965, with inclosures, that Lee

sent letters dated January 19, 1965, with inclosures, that Lee sent a letter, dated January 25, 1965, that Local 227 delivered a document styled "Grievance No. 261," dated January 21, 1965, that Lee sent a letter, dated January 28, 1965, with inclosures, and refers to said letters and documents for their contents.

24TH: Denies each and every allegation set forth in paragraph 18 of said SECOND CAUSE OF ACTION.

25TH: Neither admits nor denies each and every allegation set forth in paragraph 19 of said SECOND CAUSE OF ACTION and refers to the Conshohocken Working Agreement for its contents.

26TH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph 20 of said SECOND CAUSE OF ACTION, except admits that Lee sold the Conshocken Plant on January 17, 1966 and avers that Lee leased the Conshohocken Plant from July 6, 1965 to a third party.

27TH: Denies each and every allegation set forth in paragraphs 21 and 22 of said SECOND CAUSE OF ACTION.

THIRD CAUSE OF ACTION

28TH: Answering paragraph 1 of said THIRD CAUSE OF ACTION, repeats and realleges paragraphs 14TH, 15TH, 16TH, 17TH, 18TH, 19TH, 20TH and 26TH of this Answer.

29TH: Denies each and every allegation set forth in paragraphs 2 and 3 of said THIRD CAUSE OF ACTION and refers to the Conshohocken Welfare Agreement for its contents.

30TH: Neither admits nor denies each and every allegation set forth in paragraph 4 of said THIRD CAUSE OF ACTION, except admits that Lee transmitted its letter, dated September 18, 1964, and refers to said letter for its contents.

31ST: Answering paragraph 5 of said THIRD CAUSE OF ACTION, repeats and realleges paragraph 22ND of this Answer..

32ND: Neither admits nor denies each and every allegation set forth in paragraph 6 of said THIRD CAUSE OF ACTION, except admits that Lee transmitted its letter, dated May 12, 1965, and refers to said letter for its contents.

33RD: Denies each and every allegation set forth in paragraph 7 of said THIRD CAUSE OF ACTION.

FIRST AFFIRMATIVE DEFENSE

34TH: The Amended Complaint fails to state a claim against Lee for which the relief sought can be granted.

SECOND AFFIRMATIVE DEFENSE

35TH: International and Local 102 had notice of all the facts and of all the acts of Lee set forth in the Amended Complaint and nevertheless refrained from commencing this action until in or about April, 1966 and have thereby been guilty of such laches as should in equity bar International and Local 102 and each of them from maintaining this action.

THIRD AFFIRMATIVE DEFENSE
TO FIRST CAUSE OF ACTION

36TH: Heretofore, and in or about December, 1963, Lee and Local 102 entered into an agreement, for good and valuable consideration, pursuant to which Local 102 agreed that all obligations and liabilities on Lee's part arising out of or under all complaints, disputes, grievances and matters in controversy between or among Lee, Local 102 and members of Local 102 were assumed by Aeroquip Corporation (hereafter "Aeroquip").

37TH: Thereafter Aeroquip did assume said obligations and liabilities of Lee.

38TH: By reason of the foregoing Local 102 forever released and discharged Lee from any liability or obligation for the subject matter of said FIRST CAUSE OF ACTION.

FOURTH AFFIRMATIVE DEFENSE
TO FIRST CAUSE OF ACTION

39TH: Heretofore, and in or about October, 1963, Local 102, knowing and intending that Lee would rely thereon, acted directly and indirectly so as to cause Lee to believe that there were no outstanding complaints, disputes, grievances or other matters in controversy between or among Lee, Local 102 and members of Local 102.

40TH: Relying upon the aforesaid actions of Local 102 Lee entered into an agreement with Local 102, dated October 31, 1963.

41ST: By reason of the foregoing Local 102 is estopped and barred from asserting the subject matter of said FIRST CAUSE OF ACTION.

FIFTH AFFIRMATIVE DEFENSE
TO FIRST CAUSE OF ACTION

42ND: Heretofore, and in or about December, 1963, Local 102, knowing and intending that Lee would rely thereon, acted directly and indirectly so as to cause Lee to believe that there were no outstanding obligations or liabilities on Lee's part with respect to any complaints, disputes, grievances or matters in controversy between or among Lee, Local 102 and members of Local 102.

43RD: Relying upon the aforesaid actions of Local 102 Lee, for good and valuable consideration, entered into an agreement with Aeroquip.

44TH: By reason of the foregoing Local 102 is estopped and barred from asserting the subject matter of said FIRST CAUSE OF ACTION.

SIXTH AFFIRMATIVE DEFENSE
TO FIRST CAUSE OF ACTION

45TH: The Youngstown Working Agreement, specifically Section 3 of Article I thereof, provided for terms and conditions pursuant to which complaints, disputes or grievances as therein specified were to be arbitrated.

46TH: Local 102, without legal excuse or justification, failed to comply with the provisions of the Youngstown Working Agreement, more particularly the provisions of Section 3 of Article I thereof.

47TH: By reason of the foregoing Local 102 is estopped and barred from asserting the subject matter of said FIRST CAUSE OF ACTION.

THIRD AFFIRMATIVE DEFENSE
TO SECOND CAUSE OF ACTION

48TH: As at the time the subject matter of said SECOND CAUSE OF ACTION arose and thereafter to the present there was no contractual or other obligation whatsoever on Lee's part to the favor of Local 227 or International or any member thereof, including, without limitation, to submit said subject to arbitration.

FOURTH AFFIRMATIVE DEFENSE
TO SECOND CAUSE OF ACTION

49TH: By the terms of the Conshohocken Welfare Agreement the subject matter of said SECOND CAUSE OF ACTION was not arbitrable.

FIFTH AFFIRMATIVE DEFENSE
TO SECOND CAUSE OF ACTION

50TH: Even if any contractual obligation to submit the subject matter of said SECOND CAUSE OF ACTION to arbitration existed, the Conshohocken Working Agreement, specifically Section 3 of Article III thereof, provided for terms and conditions pursuant to which specific complaints or disputes as set forth in the Conshohocken Welfare Agreement were to be arbitrated.

51ST: Local 227, without legal excuse or justification, failed to comply with the provisions of the Conshocken Working Agreement, more particularly Section 3 of Article II thereof, even were there any contractual obligations on Lee's part to submit the subject matter of said SECOND CAUSE OF ACTION to arbitration.

52ND: By reason of the foregoing International is estopped and barred from asserting the subject matter of said SECOND CAUSE OF ACTION.

THIRD AFFIRMATIVE DEFENSE
TO THIRD CAUSE OF ACTION

53RD: As at the time Lee instituted on a voluntary basis modified group insurance coverage for its retired

former employees at the Conshohocken Plant there was no contractual or other obligation whatsoever on Lee's part to institute or maintain all or any part thereof.

FOURTH AFFIRMATIVE DEFENSE
TO THIRD CAUSE OF ACTION

54TH: As at the time the subject matter of the THIRD CAUSE OF ACTION arose and thereafter to the present there was no contractual or other obligation whatsoever on Lee's part to the favor of Local 227 or International or any member thereof, including, without limitation, any contractual or other obligation to submit said subject matter to arbitration.

FIFTH AFFIRMATIVE DEFENSE
TO THIRD CAUSE OF ACTION

55TH: By the terms of the Conshohocken Welfare Agreement the subject matter of said THIRD CAUSE OF ACTION was not arbitrable.

SIXTH AFFIRMATIVE DEFENSE
TO THIRD CAUSE OF ACTION

56TH: Even were there any contractual obligation

on Lee's part to submit the subject matter of said THIRD CAUSE OF ACTION to arbitration, the Conshohocken Working Agreement, specifically Section 3 of Article III thereof, provides for terms and conditions pursuant to which specific complaints or disputes as set forth in the Conshohocken Welfare Agreement were to be arbitrated.

57TH: Local 227, without legal excuse or justification, failed to comply with the provisions of the Conshohocken Working Agreement, more particularly Section 3 of Article III thereof, even were there any contractual obligation on Lee's part to submit the subject matter of said THIRD CAUSE OF ACTION to arbitration.

58TH: By reason of the foregoing International is estopped and barred from asserting the subject matter of said THIRD CAUSE OF ACTION.

SIXTH AFFIRMATIVE DEFENSE TO SECOND CAUSE OF ACTION AND SEVENTH AFFIRMATIVE DEFENSE TO THIRD CAUSE OF ACTION

59TH: Any and all transactions had by Lee with respect to the subject matter of said SECOND CAUSE OF ACTION

were had with Local 227 for and on behalf of employees of Lee at the Conshohocken Plant who might be covered by the applicable provisions of the Conshohocken Welfare Agreement and with respect to the subject matter of said THIRD CAUSE OF ACTION were had with retired former employees of Lee.

60TH: International had not and has not any title to or interest in the subject matter of said SECOND CAUSE OF ACTION and said THIRD CAUSE OF ACTION and International is not the real party in interest, but said employees and retired former employees are the real parties in interest, if any interest exists.

SEVENTH AFFIRMATIVE DEFENSE TO SECOND CAUSE OF ACTION AND EIGHTH AFFIRMATIVE DEFENSE TO THIRD CAUSE OF ACTION

61ST: International has not the capacity to maintain said SECOND CAUSE OF ACTION and said THIRD CAUSE OF ACTION in that, upon information and belief, International has failed and now fails to comply with and is in violation of the provisions of 29 U.S.C. Sections 461-466.

EIGHTH AFFIRMATIVE DEFENSE TO SECOND CAUSE OF ACTION AND NINTH AFFIRMATIVE DEFENSE TO THIRD CAUSE OF ACTION

62ND: If Lee is obligated under the subject matter of said SECOND CAUSE OF ACTION or under the subject matter of said THIRD CAUSE OF ACTION, Lee is obligated to certain members of Local 227 who are subject to the jurisdiction of this Court, as to both service of process and venue, and who can be made parties without depriving this Court of jurisdiction of the present parties, but who have not been made parties.

NINTH AFFIRMATIVE DEFENSE TO SECOND CAUSE OF ACTION AND TENTH AFFIRMATIVE DEFENSE TO THIRD CAUSE OF ACTION AND FOR A COUNTERCLAIM AGAINST INTERNATIONAL

63RD: This Court has jurisdiction of this counterclaim upon principles of pendant jurisdiction.

64TH: Repeats and realleges each and every averment and admission contained in paragraphs 15TH, 17TH, 18TH, 19TH, 20TH, 21ST and 22ND of this Answer as if set forth at length herein.

65TH: Under and pursuant to the Conshohocken Welfare Agreement as amended by agreement, dated December 17, 1962, entered into between Lee and Local 227, provision was made for payment of a special distribution to certain employees of Lee at the Conshohocken Plant provided Lee's operations were permanently and completely discontinued by Lee prior to the termination of the Conshohocken Welfare Agreement as so amended.

66TH: On or about July 16, 1963 Local 227 commenced a strike against Lee at the Conshohocken Plant.

67TH: Among the purposes of Local 227 in said strike was the attempt to force the permanent and complete discontinuance of operations at the Conshohocken Plant prior to the termination of the Conshohocken Welfare Agreement as so amended.

68TH: It was the intent and design of Local 227, in combination and conspiracy with members of Local 227 and others, to perpetrate upon Lee unfair labor practices in violation of 29 U.S.C. Section 187, to impede, frustrate and destroy the business of Lee and to interfere with Lee's

contractual and other relations with third persons, while Lee was then engaged in interstate commerce, and to breach the Conshohocken Welfare Agreement as so amended.

69TH: Local 227 and members of Local 227 and others unlawfully and wrongfully perpetrated unfair labor practices upon Lee in violation of 29 U.S.C. Section 187, impeded and frustrated the business of Lee and interfered with Lee's contractual and other relations with third persons, while Lee was then engaged in interstate commerce, and breached the Conshohocken Welfare Agreement as so amended.

70TH: By reason of the unlawful and wrongful acts of Local 227 set forth in paragraphs 68TH and 69TH of this Answer Lee was caused permanently and completely to discontinue operations at the Conshohocken Plant.

71ST: The aforesaid permanent and complete discontinuance of operations at the Conshohocken Plant occurred on or about December 14, 1964.

72ND: Upon information and belief, the obligations and liabilities of Local 227 in the premises have devolved upon International.

73RD: By reason of the foregoing Lee has been damaged in an amount which cannot now accurately be determined, but which exceeds $1,000,000.

WHEREFORE, defendant Lee National Corporation demands judgment dismissing the complaint herein and each cause of action thereof and judgment against International for all damages found to be due to Lee by reason of the acts and things alleged herein, together with the costs and disbursements hereof.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association, Plaintiffs, vs. LEE NATIONAL CORPORATION, Defendant.	REPLY TO COUNTERCLAIM 66 Civ. 1154

Plaintiff UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, as and for its reply to the Counterclaim of the defendant LEE NATIONAL CORPORATION against it says:

1. This plaintiff denies each and every allegation set forth in Paragraph 63rd of the Counterclaim contained in the Answer of the defendant and this plaintiff denies that this Court has jurisdiction of the Counterclaim against it upon any basis whatsoever.

2. This plaintiff denies each and every allegation set forth in Paragraph 64th of the Counterclaim against it con-

tained in the Answer of the defendant.

3. This plaintiff denies each and every allegation set forth in Paragraph 65th of the Counterclaim of defendant except it admits that Local 227 entered into a Welfare Agreement with Lee containing provisions for payment of a special distribution to certain employees and refers to the said Welfare Agreement for its contents.

4. This plaintiff admits the allegations of Paragraph 66th of the Counterclaim against it.

5. This plaintiff denies each and every allegation set forth in Paragraphs 67th, 68th, 69th, 70th, 71st, 72nd and 73rd of the Counterclaim against it.

FIRST AFFIRMATIVE DEFENSE
TO COUNTERCLAIM

6. The Counterclaim against this plaintiff fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
TO COUNTERCLAIM

7. This plaintiff repeats and realleges Paragraphs 1, 2, 3, 4, 5 and 8 of the Second Cause of Action contained in the Amended Complaint.

8. The strike at defendant's Conshohocken Plant occurred during a period of time when no collective bargaining agree-

ment existed between either plaintiff and defendant and was lawful in all respects and no cause of action can arise in favor of defendant out of the exercise by the plaintiffs or Local 227 of the right to strike.

THIRD AFFIRMATIVE DEFENSE
TO COUNTERCLAIM

9. As at the time the subject matter of the Counterclaim arose and thereafter to the present there was no contractual or other obligation whatsoever on the part of Local 227 or this plaintiff or any member thereof to the favor of defendant to refrain from striking at defendant's Conshohocken Plant or to continue to work in defendant's Conshohocken Plant.

FOURTH AFFIRMATIVE DEFENSE
TO COUNTERCLAIM

10. It was the intent and design of defendant to perpetrate upon Local 227 and this plaintiff and the members thereof unfair labor practices in violation of 29 U.S.C. Section 187, to impede and frustrate the efforts of Local 227 and this plaintiff to engage in collective bargaining with defendant for the purpose of reaching an agreement on wages, hours and other working conditions at defendant's Conshohocken Plant.

FIFTH AFFIRMATIVE DEFENSE
TO COUNTERCLAIM

11. Any damages suffered by defendant as a result of the matters alleged in its Counterclaim were not the result of any unlawful conduct on the part of Local 227, this plaintiff or the members thereof but solely the result of the conduct of the defendant itself.

SIXTH AFFIRMATIVE DEFENSE
TO COUNTERCLAIM

12. This plaintiff repeats and realleges Paragraphs 1, 2, 3, 4, 5 and 8 of the Second Cause of Action contained in the Amended Complaint.

13. To the extent that the allegations of the Counterclaim allege or constitute an unfair labor practice on the part of Local 227 or this plaintiff, Congress has vested exclusive primary jurisdiction of the hearing and determination thereof in the National Labor Relations Board by the Labor-Management Relations Act of 1947, as amended and this Court has no jurisdiction thereof.

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arh 2

(Case called.)

MR. TAYLOR: The plaintiff at this time requests the Court's permission to amend the complaint to increase the ad damnum clause from $2,000,000 to $5,000,000 and to change paragraph 8 of the amended complaint to conform to the pleadings that is now structured and the evidence to be adduced. We gave an original, I believe, suggested paragraph 8 on an earlier motion in this court. We don't have one with us at the moment but we will submit it to clarify the language of the paragraph which is a little garbled.

THE COURT: I don't have any suggested language.

MR. MOSS: I never had any suggested language, your Honor.

MR. TAYLOR: From memory I believe we did in part 1, two years ago on a motion, and if I remember correctly at that time we were moving to vacate the note of issue filed in this case at the time and I believe we moved further to amend the complaint and I think that we have in the file a proposed amended paragraph there. I am not sure.

THE COURT: The gist of the proposed paragraph is to permit you to do just what Judge Mansfield said you have to do in order to prevail?

MR. TAYLOR: Pretty much I would say, your Honor.

MR. MOSS: I would object to amending the complaint certainly until I have seen the terms in which the complaint is proposed to be amended. This case has been around for some seven years and these plaintiffs have been involved in it as their attorneys for at least three. I think that at least the defendant is entitled to be made aware of the precise amendment to the complaint which they wish to make at this time to what is part of the complaint, obviously. There has been no prior proceedings at which any such amendment was proposed in any part of this court.

THE COURT: I have Judge Mansfield's opinion. I assumed what you wanted to allege is in there in substance, the defendants precipitated or deliberately precipitated a strike. Is that what you want to allege?

MR. AUERBACH: Yes.

THE COURT: And that deliberate precipitation of the strike resulted or was just a ~~threat~~ means by which the defendant ceased operations of that plant and thereafter triggered the provisions of the contract that took effect on ceasing operations.

MR. AUERBACH: That is right.

THE COURT: Judge Mansfield wasn't very optimistic there that you were going to prove it.

MR. AUERBACH: We trust you won't be bound by that

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since it is dicta.

THE COURT: There is nothing in the rules that say I have to be bound by a fellow judge's optimistic or pessimistic statements. Is that the substance of it?

MR. TAYLOR: Paragraph 8 of the second cause of action as amended on page 8.

THE COURT: You can't be very surprised.

MR. MOSS: No, I am not very surprised.

THE COURT: That is deemed to be amended generally along those lines.

MR. TAYLOR: With respect to the ad damnum clause--

THE COURT: I take it there is no objection?

MR. MOSS: No, sir.

THE COURT: That is granted.

MR. TAYLOR: Thank you, your Honor.

THE COURT: I take it there is no concession as to the amount of damages?

MR. MOSS: No, sir.

MR. TAYLOR: Your Honor, I understand you have severed damages from liability but outside of your informal ruling I don't believe that we were ever served or I don't know whether any formal order was entered.

THE COURT: I don't think there was.

MR. MOSS: A formal order was signed and I thought

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Mr. Moss 7

arbitration. I don't know what position takes on the question of timeliness and he will have to speak for himself.

THE COURT: Why don't we hear what you have to say on that. I gather we are not going to spend much time on it.

MR. MOSS: It is defendant's position as alleged in the complaint the defendant has denied each of these grievances and that there was no demand for arbitration at all prior to the expiration of the collective bargaining agreement, under which the grievances then were filed and there was never any demand made and no demand was ever made until there was a new collective bargaining agreement entered into on October 31, 1963, pursuant to which agreement the grievances had not arisen and there was no right to arbitrate under that agreement.

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Furthermore, on December 20, 1963, the Republic Division was sold to the Aeroquip Corporation, which assumed all of the liabilities of the defendant under both the working agreement and the welfare agreement; and that that sale and that assumption was approved in writing by the plaintiff and that thereupon Aeroquip assumed whatever obligation there was outstanding with respect to those grievances but there was no liability at any time after these grievances were first denied by the defendant as admitted in paragraph 10

As far as the assumption of liability by a third party, that may help us if we want to go to the third party but it doesn't relieve them, so I don't think that the timeliness or the fact --

THE COURT: Let us not argue until I hear the facts; just get your positions.

MR. AUERBACH: Your Honor, I would like to go to the second cause of action which is the bulk of this case.

THE COURT: Judge Mansfield as to that, all he did was knock out the demand for arbitration and left everything else.

MR. AUERBACH: I would like to explain what our position is and what we intend to prove.

The company had had collective bargaining relations with the union for quite a number of years before that. They were good, healthy, active.

THE COURT: That is what Judge Mansfield describes as the calm before the storm.

MR. AUERBACH: Right. Now, this is what the new management took over or I should say the new ownership took over. We will call it Clarement for convenience. That is the name of the man and that was the man who became chairman and chief executive officer and he is the man who controlled the corporation. We will show that prior to his

arh 12

shall refer to as the welfare agreement which, by its terms, which commences and did not run concurrently with the working agreement, it was an agreement that went into effect in 1961 and by its terms was to expire in 1966 but gave the option to either party to terminate it on, I think, 60 days' notice and the first day or the first month of that notice that could be effective would be September, 1964.

b3 Now the company, if the company announced as it had a right to do -- nothing in the working agreement said they couldn't, or any other agreement said they couldn't lay off, couldn't close down -- but the working agreement provided that if they close their operations -- not the welfare agreement -- they had to pay severance pay, pensions, the usual things that these people had accumulated over the years and which they had a right to expect in the eventuality of a closing down.

MR. MOSS: Your Honor, I don't wish to interrupt but I would like to know whether the purpose is to say what the ~~defendant~~ plaintiff is going to prove or to say what kind of theory he has dreamed up about the case? He is stating as a fact here things which I do not believe it is possible for him to prove and he hasn't stated he is going to prove them, he is arguing ~~what~~ about facts which he has not yet put in evidence.

THE COURT: I understand he is telling what he

is going to prove and if he doesn't prove it you can point that out that that is what he said he was going to prove and that he didn't do it.

MR. AUERBACH: As I said, if they announced we are going to close down, that was their right, they could do that but that there would be severance pay they would have to pay. Well, if they thought they had to pay it they might as well try getting out of it and that is what they did.

As I said, they could not conceivably continue on so they found themselves a vehicle, the contract, they reduced their working force from July, 1962, when they took over, when it was about 800 to about 261 and we will show that they could not, if they were losing money when they had 800, when they had 1,100, they obviously had to lose their shirts to try to operate a plant so far below the break-even point and 261, which is totally uneconomic, even if they had an efficient plant to start with.

Now, they then went through a charade which called for them to get the union to strike, to keep the negotiations running until 1964 because they couldn't keep the plant running to 1964, that would have been a different way to do it. They wouldn't have to have a strike, they could run to 1964 and then try to close that down but they couldn't

do it because they incurred greater losses.

Now, your Honor, having practiced law for a number of years your Honor knows that just as they say any lawyer can kill a deal if he wants to, so any employer who makes up his mind he is going to do it can force a strike. That is easy, it doesn't require much ingenuity.

We will show that it had been a pattern in this plant to follow the Big Four settlements, the Big Four in the industry and the Big Four had adopted a few months earlier a contract for three years but the first year was a nine-cent increase. The company made sure to provoke the strike by not only refusing to go along with that but asking to reopen itself and then saying, here, we want you to take a 20 per cent decrease across the board; but over and above that, the company insisted on having the right to reclassify the jobs so that they could give a lower base rate and set its own production standards so that the net result of it would be if the average you made was $3 an hour and expected to get $3.09 like the rest of the package, the 20 per cent would knock you down to $2.40 an hour and then say but, Mr. Employee, your job is going to be reclassified, and we are going to do it, not the two of us, not subject to arbitration, we are going to reclassify the job and maybe give you a base right of $1.35 or $2 an hour

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and if you make a lot of production, well, you might make $2.40 an hour but probably only make $2.10 or $2.15.

So that they simply had set it so low, there was no question about it, that couldn't be accepted. The union then has to go out on strike and what they did was then carry on the charade for the next 14 months, meeting and talking but no movement and meeting and talking and the union was to a considerable extent taken in by this; not completely taken in, they suspected it but they in the hope that maybe they were wrong, they would meet and they met until finally the day came when the company announced, gave notice it was terminating the welfare agreement.

But now we say they closed their operations in July, 1963. They had been down to 261 which was on the road to closing before July, 1963, when it expired and then they maintained a force of only 55 people for the purpose of maintenance, no production, and this is the way it stayed.

They made no attempt to reopen or even hire people who would pass through or try to hire people or do anything since that time came.

THE COURT: You are not making an argument for hiring strike breakers?

MR. AUERBACH: But they made no real attempt. We can show we even offered something that was unusual for the

arh 16

union. We even offered to continue working on a day to day basis on the old contract, the old ~~terms~~ terms and that is something normally that any company that doesn't want a strike, no matter how hard nosed they are, would certainly jump at, but they refused that.

So we will show they closed, intending to close, intending to use their vast camouflage and cover so they could get to September, 1964, and say now we are terminating the agreement.

We say our rights came in in 1963 and therefore we are entitled to the damages that flow from that.

THE COURT: You say everything that Judge Mansfield said. Do you want to say it again?

MR. MOSS: No, but I would like to make a few comments.

b4 Your Honor, in the first place, this is the first time that the defendant ever heard that the plaintiffs, the union here, takes the position that in 1962 and 1963 the only possible course for the company was to liquidate. The union has always ~~taken~~ taken the position that the company was able to operate under the collective bargaining terms which they were offering and they have always taken the position that it was the duty of the company to keep on operating and that if the company had dealt with the union

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in good faith it would have made a new collective bargaining agreement and kept the company operating.

The admission here that it is now their position, among their many changes of position over the years, that there was no alternative but to liquidate the company in 1962 and 1963, lends far more support to the defendant's counterclaim that the purpose of this strike was to put the company out of business for the purpose of collecting the severance pay which they were owed than has ever appeared on the record before.

All of what the plaintiff here stated is pure surmise on their part, it is a position which they even didn't come to until the fall of 1970, which was seven years after these events took place.

Their claim that the defendant was not bargaining in good faith with them in the summer of 1963 was controverted by the regional director of the National Labor Relations Board, when they charged the company with a refusal to bargain and claimed that they were doing nothing but carrying on the charade and forced the company, the union out on strike.

The NLRB, to whom is given exclusive jurisdiction over the claim declined to issue a complaint and an appeal to the Appeals Bureau of the board, that finding was affirmed.

THE COURT: Is that res judicata on me or isn't it?

MR. MOSS: We contend that the NLRB Act preempts the field as to whether or not there is a refusal to bargain and that that has already been determined against the plaintiffs in the case.

Furthermore, when the plaintiffs in this case themselves ran afoul of the adamant refusal of Local 227 to look at the final economic facts in the case and had to withdraw their charter and seek control of their operations, the International Union which is the plaintiff in the second cause of action here, took the position that the company had discontinued its operations in December of 1964 or January, 1965, and later took the position that they had permanently ceased operations in July of 1965, when Goodyear Tire and Rubber Company took over the plant and the union made another collective bargaining agreement with them.

It is sort of ironic at this stage of the game that the plaintiff should be charging as part of the alleged conspiracy on the company's part to put the company out of business, that they didn't even try to hire strike breakers.

MR. AUERBACH: I don't know if I used the word conspiracy or intimated.

MR. MOSS: Plaintiffs know that at one time the

arh 19

company did suggest that they were going to seek to reopen the plant with the use of labor other than the then striking people and the union made it perfectly clear that nobody would be allowed to enter this plant or do any work in there, by Local 227, whether or not they had been previously enjoined from mass picketing and violence, it was never going to stand in their way.

It is defendant's position here that there was only one issue in the case and that is whether or not the defendant did permanently cease its operations in the Conshohoken plant at the time of the strike as alleged by plaintiff or whether it did not.

It is our position that in the event that the plaintiff can make out a prima facie case on that issue, which the defendant doubts, that the defendant will then be in a position to go forward and show that all of these elaborately constructed theories, are things which they claim were done for an ulterior motive, were all properly done in an effort either to put the company in a viable position where it could continue or, if not, and they could not come to some accommodation with Local 227, to reluctantly put the company out of business.

One of the things I might draw attention to before the case begins is the plaintiff's omission of the

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unproductiveness of the labor at the plant. The inhibiting factors of companywide seniority which Local 227 reluctantly refused to change, the impossible production per man hours of pounds of rubber and so forth as compared to other companies, which had put the company into the non-economic position which it occupied, certainly occupied, there is no doubt about that.

It was in that non-competitive situation brought about amongst other things by the tremendously high cost of the product which they were putting out, which was directly attributable to the union contract which they sought to change and which the union refused to change in any significant degree.

One other thing I think that the facts will show, plaintiff's counsel notwithstanding, that in the years prior to Mr. Claremont's even appearing on the scene, that the company had invested some several million dollars in the upgrading and modernization of the machinery at the plant and it was not a refusal to make the plant able as far as machinery was concerned to compete that caused the situation in which the company was in. But your Honor is right, the defendant's position is that of Judge Mansfield, that it is the burden of plaintiffs here to show that the company went out of business when the union itself struck it,

which is in itself an odd legal proposition, that by refusing to accommodate themselves to the ~~economies~~ economics of the situation, a group of employees can force the termination of the company and collect several million dollars in severance pay because of their refusal to face the ecnomic situation with which the company was involved.

I think that really the defendants would prefer to put the plaintiff to its proof on both the remaining issues in the case.

MR. AUERBACH: I would just to add one comment. Mr. Moss mentioned the NLRB.

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THE COURT: I was going to ask about that because it seemed to me the way you stated your case, part of your proof was they really weren't bargaining during this period, it was a charade. Mr. Moss tells me the NLRB made a contrary decision on that point. In other words --

MR. AUERBACH: The Pennsylvania Unemployment Insurance Appeals Board, which Mr. Moss knows about but didn't mention, made a finding on this very question when the people applied for umemployment insurance, made a finding specifically this was a lockout and that was affirmed twice by the Pennsylvania courts, I believe, by their own administrative board of review and by the courts, specifically that itwas a lockout.

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MR. AUERBACH: Mr. Hess, please.

C H A R L E S T. H E S S, JR., called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. AUERBACH:

Q Mr. Hess, will you tell us what your occupation is?

A I am president of Local 285 at the present time.

Q In 1962 what was your occupation?

A President of Local 227, United Rubber Workers.

Q Had you been employed at theConshohocken plant of the defendant?

A Yes, I have.

Q Would you tell us how long you had been employed at that plant prior to 1962?

A 18-1/2 years.

Q Can you tell us when the union first came into that plant?

A Approximately 1945.

THE COURT: I didn't quite get the sequence of what your union position was when you left.

THE WITNESS: I was president of Local 227.

THE COURT: What were those dates?

THE WITNESS: I became president in 1957 all the way through.

Q When did you say the union came in there?

A Approximately 1945.

Q When did you first become an officer of the union?

A I became a shop steward in 1946.

Q Did you in the period 1962, 1963 and 1964 take an active part in the union negotiations with the management?

A Yes, I did.

Q Had you taken an active part in such negotiations prior to 1962?

A Yes, I did.

Q Will you tell us when was the first time that you took part in the negotiations, contract negotiations?

A In contract negotiations?

Q Yes.

A Prior to 1962?

Q Yes.

A I would say I can't give you the exact time of my first negotiations.

Q Can you give us the year, approximately?

A I would say approximately 1948, when I became chief committee man.

Q From 1948 to 1962 did you take part in all of the negotiations between the union and the company?

A Yes, I did.

Q During that period of time what were they, generally two-year contracts or three?

A Two-year contracts.

Q In that period of time had there ever been a strike?

A No, sir.

Q Had there been any labor disputes outside of the usual negotiations?

A No, sir.

Q Is there an expression in the industry called the Big Four?

A Yes, there is.

Q Would you please tell the Court what that expression means?

A The Big Four means the tire companies in the rubber industry which would consist of Goodyear, Firestone, Uniroyal and Goodrich.

Q Had there been any pattern established at that time between your local and Lee with respect to the Big Four?

A Yes. When the Big Four would go into negotia-

tions and set a pattern our local would go into negotiations with the Lee Company and we would automatically get what the pattern set by the Big Four was.

Q Were there any changes at all?

A We would negotiate certain changes pertaining to our particular local at the plant.

Q What sort of changes?

A Problems that we have in our individual plant, more or less grievance procedures or different gripes we may have throughout the past two years that we would like to correct.

Q Did they affect any big money questions?

A No, I wouldn't say so.

Q Now, Mr. Hess, can you tell us a little more fully what you meant by the pattern of the Big Four? What I particularly would like you to tell us, on money matters, on anything affecting costs, how closely did you follow the Big Four?

A We would follow the Big Four right to a T. If the Big Four went into negotiations and came out with 15 cents an hour increase, just as an example, that we then at our plant would automatically get the 15 cents. We never had any problem with management at that time as far as negotiations were concerned according to the

pattern.

THE COURT: Did you have the same hourly wage as the Big Four?

THE WITNESS: No. I wouldn't say our wages were exactly the same as theirs because they vary all over the country, all over the states. It depends. But when they would get an increase we automatically would get the same increase.

THE COURT: Would it be a percentage increase or a flat increase?

THE WITNESS: If they got 15 cents we would get 15 cents.

THE COURT: It might be a higher or lower percentage for you than them?

THE WITNESS: No.

THE COURT: If the wages weren't the same the 15 per cent would be a higher or lower percentage.

MR. AUERBACH: He said cents.

THE COURT: That is what I mean. If your wages were not the same 15 ~~per cent~~ cents would be a higher or lower percentage of your wage and their wage.

THE WITNESS: I don't follow your question.

THE COURT: If your wages were a dollar and theirs was two dollars, for the sake of argument, a 15

cents increase would be much higher a percentage of one dollar than it is of two dollars?

THE WITNESS: Well, in 1945 -- let me try to explain it my way. We had one certain wage, when the union came in, maybe their wages in the rubber industry were higher. Different plants were higher. But at the time we started negotiating in 1945 and a pattern was set, we would automatically get what the Big Four would get and if they would get 15 cent we would get 15 cents.

THE COURT: You would get 15 cents over what your hourly wage was and they would get 15 cents over whatever their wage was?

THE WITNESS: Right, unless we negotiated an inequity, which we have done on many occasions when we felt certain jobs were underpaid and we would propose an inequity for this job and probably get it. We negotiated many inequities to bring certain jobs up to par.

Q Mr. Hess, were you familiar with the rates in the different Big Four companies?

A Yes. We received copies from the international of the rates.

Q Are you in a position to tell us what the actual wage rates were in your local as compared to what they were in the Big Four? Higher, lower, about the same or what?

A I would guess by saying they were lower.

Q Your rates were lower?

A Our rates were lower, yes.

Q Now, at the time in July -- jumping ahead a bit, in June 1963 before your contract terminated, what was the average hourly rate at Conshohocken?

A I would say approximately $3 an hour.

Q Was there a Big Four settlement in early 1963?

A Yes, there was.

Q Can you tell us what that was?

A I'm not sure but I believe it was seven, six and six. It has been so long.

THE COURT: Isn't that a matter of record?

MR. AUERBACH: Yes, but it is not the amount --

Q If I tell you, Mr. Hess, it was nine, seven and six cents an hour, would that refresh your recollection?

A Yes.

THE COURT: What does that mean, nine, seven and six?

MR. AUERBACH: Over a three-year period that means that nine cents --

THE COURT: The first year and seven cents and six cents the years thereafter?

MR. AUERBACH: Right.

Q Would it be correct to say that if as in previous years Lee had followed the national pattern in ~~1966~~ 1963 your average hourly rate would have gone to $3.09?

A Right.

Q Were you as an officer familiar with the number of people working in the plant in June and July, 1962?

A Yes, sir.

Q Can you tell us how many people were working in the plant in June and July, just before Mr. Clairmont became chairman?

A Before Clairmont came in there?

Q Just before.

A I would say we had gotten down to 825 employees.

THE COURT: You say you were down to. What does that mean? Had it been going down some time?

THE WITNESS: Not for some time. I would say

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as to his recollection.

THE COURT: But he obviously doesn't know. He answers whatever you want him to answer.

MR. AUERBACH: Let me see if I can clarify it.

BY MR. AUERBACH:

Q Do you recall being told by the company when Mr. Clairmont became chairman -- how did you find out about it?

A When Mr. Clairmont became chairman? I believe we were in negotiations at that time and they made an announcement that I believe at that time he fired Mr. Garthwaite ~~Cartwaite~~ as chairman of the board and was taking over himself.

THE COURT: Mr. Clairmont fired Mr. Garthwaite ~~Cartwaite~~? How did you find that out?

THE WITNESS: That was news in the Conshohocken area.

THE COURT: But counsel's question is how did you learn it, who did you learn it from.

THE WITNESS: There was an announcement made.

THE COURT: What was that announcement?

THE WITNESS: In the newspapers and also I believe that the stock reports; I don't know.

Q After Mr. Clairmont became chairman were there

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right down the line. Stated they needed relief.

Q Was that all in that meeting at the end of October 1962?

A Yes, I would say so.

Q What did the union say in regard to that?

A As far as taking a 25 per cent wage cut?

Q Yes.

A At that time in October we were willing to negotiate with the company and try to come up with some type of a settlement in order to get that plant back in operation.

Q Back about 1962 it was still operating, wasn't it?

A October of -- yes, in October of 1962 we rejected two of his proposals at that time as far as the --

Q In the history of the bargaining between the union and the company prior to 1962, had there ever been a time when the union had been asked to take a cut?

A No.

Q Had there ever been a time when the union did not negotiate an increase?

A No.

Q Had there ever been a time when the company did not offer some kind of increase at the start of negotiations?

A No, they always come up with something.

Q When was the next meeting with the --

A The answer to that previous question I would like to correct myself. As far as prior negotiations we had never had a problem when we would go into the negotiations. The Big Four had already made their settlement and the company would automatically come out and tell us, "We will automatically give you what the industry has received."

We had no problems. They didn't have to make any type --

Q Was there any other rubber company in the vicinity of Conshohocken that didn't follow the Big Four, meaning tire companies?

A No, they all followed the Big Four.

MR. MOSS: You haven't laid any foundation that there were any other tire companies in the vicinity.

THE COURT: What tire companies were there in the vicinity?

THE WITNESS: We had Goodrich in ~~Oaks~~ Oaters and we have Firestone in Pottstown and we considered them right in the area there.

THE COURT: They didn't follow the Big Four?

THE WITNESS: They are the Big Four, right.

Q Were there any others in the same labor vicinity,

20, 30 miles? Any other rubber companies, tire companies?

THE WITNESS: Not that I know of. U. S. is in the Philadelphia area. I don't know whether that is a tire plant or not.

Q When was the next meeting that you had with Mr. Clairmont?

A Prior to negotiations?

Q Prior to the end of the contract. I would like to show you these, 31A and 32A. Take your time and read them over.

THE COURT: It is approaching 4:30 and is this a good time to break?

MR. AUERBACH: All right, your Honor.

MR. TAYLOR: Your Honor, are we breaking for the day?

THE COURT: Until 10:00 o'clock tomorrow morning.

(Adjournment taken until January 24, 1973, at 10:00 A.M.)

rpl 103

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL-CIO, an unincorporated association, and UNITED, RUBBER, CORK, LINOLEUM AND PLASTICWORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,
Plaintiffs,

vs.

LEE NATIONAL CORPORATION,
Defendant.

66 Civil 1154

- - -

New York, January 24, 1973;
10.00 A.M.

Trial resumed.

- -

C H A R L E S T. H E S S, JR., resumed.

DIRECT EXAMINATION CONTINUED

BY MR. TAYLOR:

Q Mr. Hess, yesterday when you were questioned you were asked if you recalled how many members of Local 227 were actively employed some time in the fall of 1962.

Having reviewed similar documents in this case last night, could you now state to the best of your knowledge what the situation was then?

A Yes. We had approximately 825 employees.

THE COURT: At what time was that?

THE WITNESS: This was approximately say

rp2? Hess-direct

around June, 1962.

Q Would you ordinarily have a way of knowing the numbers of active employees at any given time?

A Yes.

Q Could you explain?

A The per capita tax we paid the International for dues.

Q In other words, you paid dues for every active member of the union engaged in the plant at a given time?

A Yes.

Q As president of the local you were privy to all such information, weren't you?

A Yes.

Q Yesterday, Mr. Hess, my colleague asked you when to the best of your recollection you first met with Mr. Clairmont. Do you have a better recollection now when that was?

A Yes.

Q Could you tell the Court when and what the circumstances were?

A That was in 1962.

Q Do you know approximately when?

A Around October, 1962.

MR. TAYLOR: To refresh the recollection of the

rp4 Hess-direct

trial examinations.

THE COURT: Mr. Moss's objections are valid as to the weight of the testimony, but I will allow him to refresh his recollection.

BY MR. TAYLOR:

Q Mr. Hess, could you in brief summary tell us when the meetings took place and who was present -- Mr. Hess, how did those minutes come about?

THE COURT: Are they in evidence?

MR. TAYLOR: They are not.

Q Are minutes regularly taken by the members of the union negotiating committee?

A The secretary.

Q Is it standard practice for Local 227 to have some record minutes of various negotiating meetings with management?

A Yes.

Q How soon are such minutes usually prepared?

A I would say about a week.

Q All right. Now, just referring quickly to those documents, could you tell us the dates of the various meetings and who was present?

A We had a meeting on October 31, 1962, at the Akron Tower Motel in Akron, Ohio, and we had the Local 227

rp5 Hess-direct

negotiating committee present at that meeting plus the Local 102 representatives, plus Clairmont, Garthwaite, Jr., Conway, Young, Zaccarias and Garrett for the company.

Q All various members of the management committee?

A Yes.

Q Was the International Union also present?

A Yes, they were.

Q What was the purpose of that particular meeting -- who from the International Union was present at that meeting?

A The International Union, it was President Burdon, Vice-President Bommarito, International Counsel Mr. Patterson, Assistant Counsel Vasko and Oldham, Pension Director.

Q Who called that meeting?

A This meeting was called by Mr. Clairmont.

Q What was the purpose of that meeting?

A The purpose of the meeting was to meet with the International, telling them at that time that he took over as chairman of the board, and also that they had problems as far as agreements were concerned with the two locals.

Q What kind of problems did he say they had?

A He discussed pensions and so forth.

THE COURT: What did he say about them, as far

rp6 Hess-direct

as you remember?

THE WITNESS: Well, he started to mention pensions and President Burdon made it clear that they were not here to negotiate. But he did state that we had a problem as far as pensions and funding.

THE COURT: What were you there for if you weren't there to negotiate?

THE WITNESS: We weren't there to negotiate.

THE COURT: I understand that, but what were you there for?

THE WITNESS: Because Clairmont called the meeting.

THE COURT: But why did you go?

THE WITNESS: Clairmont suggested that we go out there. He suggested to both locals to be there.

THE COURT: What was your purpose in going there?

THE WITNESS: We didn't know until we got there.

THE COURT: Just to listen?

THE WITNESS: Right.

Q Had you ever met Mr. Clairmont before this meeting?

A No.

Q Wasn't the primary purpose to meet with Mr.

rp7 Hess-direct

Clairmont?

A Yes.

Q He was formally introduced to you at thattime?

A Right.

Q Did Mr. Clairmont at that time indicate what he thought the condition of the company was?

A Yes.

THE COURT: What did he say about that?

THE WITNESS: At that time he told us that sales were off and he needed relief as far as pensions were concerned.

Q That iswhat he told you?

THE COURT: You knew, I assume, sales were off before he told you?

THE WITNESS: No. He said at the time they lost the Phillips order.

Q What?

A The Phillips 66 order.

Q What is Phillips 66?

A Their largest customer.

Q They lost them?

A Right.

Q How did that affect the company, did he say?

A It affectedthe company, the fact that they were

rp7a Hess-direct

the largest customer, Phillips 66, the only large order they had, plus the 45 branch stores and the 45 branch stores weren't doing too good.

Q I see.

THE COURT: That is what he told you?

THE WITNESS: Yes.

THE COURT: That was news to you about Phillips 66?

THE WITNESS: Yes, at that time.

Q Were there any other meetings and what transpired at this time?

A At this time?

Q You are referring now to this meeting on October 31?

A Right.

Q Did you --

THE COURT: Let me get the picture clear. As I understand it, Mr. Clairmont told you these things. Did any union representative say anything in response?

THE WITNESS: No, as I said, we stated we weren't there to negotiate and we did listen to him.

THE COURT: But youdidn't say anything as far as you can remember?

THE WITNESS: No.

THE COURT: You just listened?

THE WITNESS: That is right.

THE COURT: Mr. Burdon, who is he?

THE WITNESS: Mr. Burdon was our international president.

THE COURT: So that was a meeting where you just listened to what Mr. Clairmont had to say and I assume--

THE WITNESS: I think there is one more thing in there, I am not sure if that was the meeting or not, could I check back? Let me see something.

At that time he did ask for relief.

THE COURT: This is Clairmont?

THE WITNESS: At the October 31 meeting. He gave us a six point program for the Conshohocken plant.

THE COURT: What was that six point program?

THE WITNESS: Well, do you want me to read all six of them?

MR. MOSS: Your Honor, I object to this witness testifying by reading from a document which isn't in evidence. I object to the document on the ground that it is not his document; he didn't prepare it. It may be able to refresh his recollection, if he has a recollection, but to be reading here from somebody else's documents of a matter that took place ten years ago I think is improper. I object.

THE COURT: First as to the document itself,

Q October 31?

A Right.

Q November 13?

A Right.

Q And November 16, am I correct?

A That is correct.

Q 1962. Would you please tell the Court essentially who was present at the meetings of November 13 and November 16 and where they were held?

A Yes.

MR. MOSS: Your Honor, if these are in evidence and he has no recollection, I don't see very much point. The documents supposedly speak for themselves, do they not?

THE COURT: Yes, but it is a convenient way of getting it before the Court. The record shows that he is merely reading from documents which are in evidence and he is not adding anything to them by way of personal recollection.

THE WITNESS: The meeting of November 13, 1962, that was held in the conference room in the plant at Conshohocken. Present at that meeting were the union negotiating committee plus the compnay representatives.

Q What was thepurpose of that meeting?

A November 13 meeting --

Q Yes.

A This was a followup meeting from the meeting of October 31 in Akron pertaining to the six point program that they brought out in Akron.

THE COURT: Was this meeting to discuss the program or just to listen?

THE WITNESS: No, this was a meeting to discuss the program, right.

Q Would you tell us a little bit more about what was the subject or substance, at least, of the meeting?

A Of the six point program?

Q Of anything discussed at the meeting in behalf of management or in behalf of the union, to the best of your knowledge?

A Yes.

THE COURT: Now, you say to the best of your knowledge, turn that paper over and don't look at it and tell us what you remember about it.

A To the best of my knowledge they talked about seniority rights, the bumping procedure in the tire room--

THE COURT: The what kind of procedure?

MR. TAYLOR: Bumping.

THE WITNESS: Yes.

THE COURT: And your international president said, you are not there to negotiate, you are just there to listen?

THE WITNESS: Right.

THE COURT: So all you did was listen?

THE WITNESS: That is all we did was listen.

THE COURT: Then on November when?

THE WITNESS: On November 16.

THE COURT: On November 16 there was a second meeting?

THE WITENSS: Right.

MR. TAYLOR: Forgive me, your Honor. November 13 and the 16 --

THE WITNESS: November 13 was a followup meeting from the meeting in Akron.

THE COURT: Now, on November 13 there was a followup meeting?

THE WITNESS: Right.

THE COURT: Mr. Clairmont laid out the same points?

THE WITNESS: Mr. Clairmont was not present at the October 13 meeting?

THE COURT: He was present in October, but

he wasn't present in November?

THE WITNESS: He wasn't present at the November 13 meeting, right.

THE COURT: But somebody representing management laid out his same points?

THE WITNESS: Right.

THE COURT: Is that what happened?

THE WITNESS: And at that meeting we discussed all six points.

THE COURT: What did you say about them, not you personally, but your side?

THE WITNESS: After we had discussed them we had some questions that we asked and the company committee at that time couldn't answer the questions so we stated we would like to have Clairmont in to answer these questions.

THE COURT: Do you remember what the questions were?

THE WITNESS: No, not offhand. We were talking about each one of these points, why they wanted them and so forth.

THE COURT: Your minutes don't show what the questions were?

THE WITNESS: No.

THE COURT: All you remember --

THE WITNESS: We asked different questions. It shows.

THE COURT: What were the questions? Now you are looking at the minutes. Which of the minutes are you now looking at?

THE WITNESS: November 13.

MR. TAYLOR: The witness is now referring to document PTO31A, the minutes of the meeting on November 13 at Conshohocken.

THE COURT: What questions do those minutes show were raised?

THE WITNESS: We questioned about the side agreement in the tire room and we questioned that at length. If we did away with it, what could happen?

THE COURT: You have to bear with me because these things aren't familiar to me. What do you mean by side agreement in the tire room?

THE WITNESS: We had a side agreement in the tire room where we had desirable tire machines and the senior employee would have the privilege of going on the desirable machines. Where we had less desirable machines, the less senior employees would get those.

Since the company was laying off --

THE COURT: The side agreement is what you referred to earlier of trying to waive seniority?

THE WITNESS: Right.

THE COURT: As I understand that, Clairmont told you, this seniority system is giving me incompetent people to work these machines, but they have been there longer, but it is the younger people who know how to work the machines. By the side agreement you mean waiving seniority so as to permit less senior but more actually experienced people to work the machines?

THE WITNESS: That is right.

THE COURT: You had questions about that?

THE WITNESS: Yes.

THE COURT: What were the questions?

THE WITNESS: We questioned this and we explained to the company what could happen if we had agreed to this.

THE COURT: What did you tell the company?

THE WITENSS: We told them that tire employees have been building tires for years and run certain machines and then other employees would come on and they would get the least desirable machine.

What the company wanted to do at that time is assign tire builders to certain machines and we disagreed

with this.

THE COURT: You said you asked questions. What questions did you ask that he couldn't answer, the then negotiator, or do your minutes show?

Do you have any extra copies of these minutes?

MR. TAYLOR: Yes, your Honor.

THE COURT: Show them to Mr. Moss to make sure they are the same. The last trial I was conducting with all the best faith in the world, counsel handed me papers that were different from what his opponent had. That caused a certain amount of confusion before we got through.

MR. TAYLOR: They are in order, your Honor.

THE COURT: Thank you.

Now you are looking at 31, right?

MR. TAYLOR: Yes, he is, your Honor.

rp4 Hess-direct

or dry materials is a standard situation to the best of your experience?

A Yes.

THE COURT: I didn't want to interrupt your program.

MR. TAYLOR: I think there is a question on the floor, your Honor. I think, if I remember correctly, you asked the witness to the best of his recollection what questions the local wanted to put to Clairmont at the meeting in Conshohocken.

Q Mr. Hess, now that you refreshed your recollection, could you state essentially what the questions were that you wantedto discuss with Clairmont?

A Now that I recollect, the 6-point program came from Clairmont and when Mr. Conway called this follow-up meeting he kept talking about Clairmont presenting this 6-point program all the way through.

And we, the union committee, got together and decided since Mr. Clairmont wanted to present this 6-point program, we felt he should be in on the meeting and discuss it with us and we recommended to the company that he hold another meeting with Mr. Clairmont present.

Q Did that meeting come to pass?

A Yes.

rp5 Hess-direct

Q What was the date of that meeting?

A That meeting came about on November 16, 1962.

Q Do you have the minutes of that meeting in front of you?

A Yes.

MR. TAYLOR: The witness is now referring to document 32-A, a meeting of November 16, 1962, at the company's plant in Conshohocken.

Q Could you tell us essentially what transpired at that meeting, Mr. Hess?

A Well, Clairmont came in and we talked about the program that he had presented. He said he gave some thought to the program.

Q Did Mr. Clairmont present a program that he wanted the union to accept and adopt now, right at that time?

A Yes.

Q What was the union's situation at that time?

A At that time the company was laying off, they were laying off a lot of men and they had a problem of losing tire builders and they stated as tire builders go out the door you have to break in new tire builders and that would create a problem. If they got any tire orders they wouldn't be able to bring their production up.

Q At that moment of time was Local 227 operating

rpll Hess-direct

are at.

Q To the best of your knowledge, can you tell the Court what concessions or agreements, if any, the union came to with the company and approximately when? If you like, I will take them pointby point.

THE COURT: Why don't you do that.

Q Super seniority with respect to the tire building room.

A All right. Super seniority in the tire building room we agreed to this,and I can't tell you exactly when but it was after these meetings.

THE COURT: Was that agreement ever put into effect?

THE WITNESS: Yes, it was. We had layoffs, as a matter of fact, I was listed as a tire builder myself and I had 18-1/2 years seniority, but I was not laid off due to the fact that I was a tire builder.

Q Did you make any accommodation or agree to any accommodation on the staggering of shifts of the maintenance employees?

A No, we didn't.

Q Did you come to any agreement concerning the non-bargaining unit people being brought back into the bargaining unit?

rp12 Hess-direct

A No.

Q Did you make any allowance or come to any agreement concerning off standard payment of 100 per cent?

A No.

Q Did you come to any agreement concerning the problem of outside contractors?

A No.

Q Mr. Hess, following the meetings that we have just been discussing, could you tell us generally what events took place between this period and the time when the negotiations for the new collective bargaining agreement in the spring of 1963 commenced? What was going on at the plant?

A We were having a lot of layoffs. The company was reducing its force considerably.

Q Were the layoffs coming at random or going on a departmental basis?

A They were coming plant-wide outside of tire building.

Q This was a pretty general reduction?

A I would say at first coming plant-wide and then we had agreed to this super seniority for tire builders and it was plant-wide except for tire building.

Q Do you remember having a meeting with Clairmont

rp15 Hess-direct

as to the local and the people from the International?

MR. TAYLOR: We will have testimony on this shortly from the International itself, your Honor.

Q Mr. Hess, in summary analysis theoutline of the company's picture given to you at that time by Mr. Clairmont?

A Lack of sales, lack of outlets.

Q Could you tell us what he described as the condition of company sales and sales outlets in your own words, please?

A The lack of sales, where he talked about losing the customer, Phillips 66.

Q What was the effect of the loss of Phillips 66 on the company?

A That was Lee's biggest customer and the loss of that sales, they were pretty well hit, and also stated that they have 45, I believe, branch stores.

Q Yes.

THE COURT: What?

THE WITNESS: Branch stores, different branch stores.

THE COURT: Do you know the date of the loss of this customer?

Do you know whether this customer was lost before Clairmont took over or after he took over?

THE WITNESS: No, I know Phillips gave the company, Lee Tire, a notice, a five-year notice that they were pulling out and they kept cutting their order down. At the completion of five years they were finished. In the meantime Clairmont explained this, but the Lee Company, they weren't doing anything about going out looking for new sales or anything, they just let it ride and they found themselves in a bind.

THE COURT: I suppose someone else knows when ~~whether~~ that notice came from Phillips?

Q To the best of your recollection, did the Phillips account close out at about this time?

A Yes.

Q Right at about this time. It was terminated and no longer in effect?

A Right.

Q Did Mr. Clairmont say that at this time that left the company only with its branch sales operations essentially?

A Yes.

individually.

MR. MOSS: I move to strike document 82A which is a decision which Mr. Auerbach was just reading from, which affirmed the decision and said that the board was entirely correct in not going into the economic circumstances.

THE COURT: Obviously the witness is not going to be asked about 82A and I will reserve decision on that until after I have had a chance to read the document.

MR. MOSS: I might poiht out that page five of that document, the court says, "It is well-established that such economic evaluation is beyond the scope of the unemployment compensation authorities."

THE COURT: I will read the whole document.

MR. MOSS: Very well.

BY MR. TAYLOR:

Q Mr. Hess, did there come a time when the company gave the local 227 what is known as a 60-day notice to re-open the collective bargaining agreement?

A Yes.

Q Would you confirm that took place on or about April 18, 1963?

A Yes.

Q Was it normal practice for the company to give such 60 day notice to the union?

A No.

Q Could you explain that, please?

THE COURT: Had they ever given such notice before this?

THE WITNESS: The company never sends us a notice, we usually send the company a notice that we would like to negotiate and amend our agreement.

THE COURT: This is the first time you got such a notice?

THE WITNESS: That is the first time I received a notice.

Q Did you in turn give the company a similar 60 day notice?

A Yes, I believe on April 29th we sent the company a letter stating that we would like to reopen to amend our agreement.

THE COURT: They had already sent you one?

THE WITNESS: On April 18, I believe.

THE COURT: Why did you have to send them one?

THE WITNESS: We want to send our notice in that we would like to reopen to amend.

THE COURT: I am curious as to why that was necessary. Didn't their notice have that effect?

THE WITNESS: Yes, it was.

AR 8 Hess - direct

A Yes.

THE COURT: Benefits under what?

MR. TAYLOR: Under the welfare agreement.

Q It is a fact, as we have already testified to, so the Court will understand, the welfare agreement did not by its terms terminate until two or three years after that?

A Yes.

Q Was there any change from the time of the beginning of the ~~negotiations~~ negotiations in the spring of 1963 and the time when the work stoppage occurred in the company's position, basic position negotiating for a new contract?

A No.

Q What, in your own words, would you say the company's changing position was, if any, ~~in~~ on any of these terms that you just discussed?

A I don't follow your question.

MR. MOSS: He just testified there wasn't any change.

THE COURT: There was no basic change.

Q Did the union make any offers or concessions to the best of your recollection with regard to the package requested by the company, or any part of it? Make any offers?

A No.

Q The union's position remained steady and firm from

AR 9 Hess - direct

the outset through to the work stoppage?

A Yes. We made a concession when we wanted to continue on with the 1961 agreement.

Q What do you mean by that?

A Well, we offered to continue working under the 1961 agreement; offered to roll back on that agreement.

Q Do you mean to tell us that the union offered to extend the then existing agreement which was dated in 1961, expiring in 1963?

A Yes.

Q Or do you mean that you were willing to give up something that you had obtained in that contract?

A No. We were willing to continue working with the 1961 agreement.

Q Is it that the union made no further demands on the company at this time beyond the terms and conditions in the then existing contract?

A That's right.

Q Did the union offer any form of relief to the company or suggest any plan to the company at this time as to what it might do with its problems?

A I don't recall.

Q Did the union offer to the best of your recollection, to extend the then working agreement for one year,

AR 10 Hess - direct

at theend of which there would be a discussion as to the labor costs involved and an adjustment made at that date as to any increase in the company's costs with regard to labor?

A Yes.

THE COURT: That is obviously a leading question but I take it that is the fact?

MR. MOSS: I dont think any of this is fact and certainly not a fact unless the union here -- this witness is willing to fix a time as to some of this. All of this is done without any reference to any time.

The negotiations lasted from the beginning of May until sometime in 1964, with respect to this contract, your Honor, and I think it is incumbent upon plaintiffs to specify as to time.

MR. TAYLOR: Your Honor, I specifically asked in this time period from the beginning of negotiations until the work stoppage in 1963, a matter of two months only.

THE COURT: Negotiations continued after the stoppage?

MR. TAYLOR: There were some negotiations continuing after.

MR. MOSS: If that is so,may I hear the last questions and answers, please.

T HE COURT: I am going to break at 12 o'clock and you can work that out. Resume at 2:15.

(Luncheon recess taken until 2:15 p.m.)

AFTERNOON SESSION
2:20 p.m.

C H A R L E S T. H E S S , J R . resumed.

DIRECT EXAMINATION CONTINUED

BY MR. TAYLOR:

MR. TAYLOR: I believe, your Honor, at the recess we were trying to reconstruct, if I recall, the most recent question or series of questions asked this particular witness.

THE COURT: Why don't you just go on.

Q Mr. Hess, we were asking you at the recess, we were discussing the relative positions, bargaining positions or statements of the parties just prior to the work stoppage in July 1963 and I asked you if there were any changes or what position the union had taken in its bargaining position at this time or at about this time?

A At one of our meetings in July, the federal mediator suggested if we had binding arbitration and the union had agreed to this, but the company had refused.

Then we agreed to extend our present agreement at least for a year in order to give the company the chance to take a survey of their costs and so forth and see what they could come up with.

Q By the present agreement you mean the collective bargaining agreement in force from July 1, 1961 to June 30, 1963?

A Right.

Q You were talking about an offer to extend for one year?

A Right.

Q The exact contract with no changes?

A With no changes, right.

Q What did the company say with respect to that?

A They would go back to their board of directors. They would try to get permission from their board of directors and then they would get back with us. They never did get back with us until July 16.

Q What happened on July 16?

A On July 16, 1963 they told us, we wanted to continue working we would have to work under their terms and conditions as of July 18, 1963.

Q What were their terms and conditions?

A Their terms and conditions were a 20 per cent wage cut, re-evaluation of jobs.

THE COURT: Re-evaluation of jobs, was this to be done by this outfit?

THE WITNESS: Re-evaluation of jobs by

Q Did the union thereupon go on a strike with the posting of these rules?

A After we had the meeting on July 16, the committee went back to the union hall and we discussed it and I made several calls to our personnel director, Mr. Joe Conway, and asked him if we could continue on a day-to-day basis or continue on until we had come to some type of settlement and they had refused.

Q That is continue under the existing contract on a day-to-day basis while negotiations continued?

A Right. They refused.

Q Did negotiations continue on for a period after that time?

A Yes, they did.

Q Did they continue on a regular basis?

A Yes.

Q Was there any change in the position of the company?

A No, no.

Q Did you receive a letter from the company --

THE COURT: What did you do in these negotiations?

THE WITNESS: Pardon me?

THE COURT: What happened in these negotiations?

there. He would ask us questions and ask the company questions.

THE COURT: Can you give me any kind of a feeling as to what went on at one of those meetings?

THE WITNESS: Yes, I can give you one example. We had one meeting --

THE COURT: A six-hour meeting is one I want.

THE WITNESS: Yes, we had one meeting of approximately six hours at ~~hte~~ the Valley Forge Hotel up in Norristown. This is where we conceded on every move the company wanted. We gave in on all their proposals just to more or less see what they would do.

THE COURT: You mean you gave in on this whole work plan?

THE WITNESS: The whole works, yes.

THE COURT: Then what happened?

THE WITNESS: The company told us it was too late. The axe had fallen.

THE COURT: When was that; what was the date of this meeting?

THE WITNESS: This was sometime in 1964.

THE COURT: How long had the strike been going on at that time?

THE WITNESS: Since July 16 of 1963.

THE COURT: So this was a year after the strike had been called?

THE WITNESS: It was in '64. I can't tell you exactly whatmonth in '64.

THE COURT: Did you have any six-hour meetings or anything over a two-hour meeting in the early part of these negotiations?

THE WITNESS: No,notthat I can recall.

A Right.

Q What was the purpose of the union offer?

A Well, we were not working and we more or less wanted to get as many of our people as we could possibly getin there to work rather than see outsiders go in.

Q That work had to be done even if it wasn't in manufacturing order?

A Yes.

Q Mr. Hess, have you since been engaged by the Goodyear Tire & Rubber Company?

A Yes.

Q When were you engaged by them?

A August 11 of 1965.

Q Have you since gone back to work in their plant in Conshohocken?

A Yes.

Q That is the same plant as the plant in question?

A Yes.

Q What was the condition of the plant?

A The same as when we left it.

Q The same condition at that date as the date when you had last left it?

A Yes.

Q You last left it in July, 1963?

rp7 Hess-direct

A Yes.

Q Mr. Hess, did you have a chance to observe any of the equipment and machinery in the plant when you came back under Goodyear?

A Yes.

Q Can you describe the similarity or lack of similarity of the equipment or machinery in the plant at that date?

A It was the same machinery in there as when we left.

Q To all intents and purposes the same plant?

A Yes.

THE COURT: The same condition, I think you told me?

THE WITNESS: Yes.

MR. TAYLOR: We have no further questions at this time, your Honor.

THE COURT: Are you prepared to proceed or do you want a couple of minutes to organize yourself?

MR. MOSS: I would like a few minutes to get organized.

THE COURT: All right, take five minutes. Let me know when you are ready.

(Recess.)

rp9 Hess-cross

CROSS EXAMINATION

BY MR. MOSS:

Q Mr. Hess, there wasn't anything improper or not in accordance with the terms of the welfare agreement in your receiving a notice that it was to be reopened on May 1, 1964, was there?

A It was just odd that the company had sent us a notice.

Q This provision for reopening in May, 1964, had been negotiated by the union in the summer of 1961, had it not?

A Yes.

Q That was before Mr. Clairmont had anything to do with the company as far as you know, was it not?

A Yes.

Q And the contract provided, did it not, that if you and the company did not agree on any changes in the welfare agreement within 60 days after the reopened date that either party could give notice of termination, isn't that right?

A Yes.

Q You had a right to reopen the contract on May 1 -- the welfare agreement on May 1, 1964, if you wanted to also, did you not?

A Yes.

Q If you wanted changes which the company would not agree to, you had a right within 60 days to give notice of its termination?

A Right.

Q All of that had been agreed to in 1961?

A Yes.

Q I believe you testified on your direct examination that you had taken an active part in the union negotiations with management ever since approximately 1948?

A Yes, in one way or another as a committee man.

Q You testified yesterday you became a chief committee man in 1948?

A Around 1948, approximately.

Q What is a chief committee man?

A The chief committee man is a division chairman. He is more or less a chief steward over a certain division.

He would be involved in negotiations for that division and he would also be a member of the negotiating committee.

Q What do you mean by a division?

A The tire room would be one division; and we might have the inspection room and curing room, they would be connected as another division; and you might have the

Q Was Walter Tarbutton one of those members?

A Yes.

Q Each year?

A Yes.

THE COURT: What was that last question?

MR. MOSS: Each year was Walter Tarbutton a member, each year in 1961 and 1963.

Q Is that right?

A In 1963 he was on the committee. I can't recall whether he was on the committee in 1961 or not.

Q Now, you testified that prior to 1963 there never had never been a strike?

A Yes.

Q I believe you testified there had been no labor trouble at all?

A Not that I can recall.

Q With the prior management?

A Right.

Q You testified, I believe, every year the Big Four set the pattern?

A Yes.

Q And that the company always gave you everything the Big Four got?

A Yes.

rp13 Hess-cross

Q So what did you negotiate about?

A Well, we would have maybe certain problems in our plant, which we had very few, we would automatically go in there and the company would come along and give us what the Big Four have and the negotiations would be settled.

Q What would these problems be about?

A It could be a grievance procedure, maybe we wanted to change the grievance procedure.

Q Am I correct what you negotiated about was making the Lee contract a better contract for you than the contract the Big Four had?

A I would say for our individual plant, yes.

Q So that in your negotiations you got not only what the Big Four had gotten, you managed to get more?

A No, I wouldn't say that. I would say maybe they had these items in these other plants. We would find out what they have and we would try and negotiate the same system. Now, when I say we got what the Big Four got, we are talking about wages and fringe benefits. Then we might find out at a later date that they had a different grievance procedure than ours.

We might discuss this with the company and even the company might agree that it would be a better system for both of us if we got it, and that is more or

rpl4 Hess-cross

less it.

Q The biggest item in personnel costs, am I correct, is wages and fringe benefits?

A Yes.

Q You never negotiated with the former management of the company about them?

A About wages?

Q And fringe benefits?

A Yes, it was -- we considered it negotiations when we went in and discussed it with the company.

Q You considered it to be a negotiation when the company came up, as you testified they did, and said, "We will give you everything the Big Four got," and you said, "Okay, fine"?

A We would go in and we would discuss it and we would be in there, I would say, maybe a week and we came out with everything.

Q Talking about wages and fringe benefits, you never negotiated them, did you?

A Actually we got what the Big Four got.

THE COURT: That is what he means.

Q Management never negotiated with you the major items of personnel costs which were wages and fringe benefits?

rp15 Hess-cross

A Not that I can recall.

Q Are you familiar with the Goodyear Company?

A I am familiar with it, yes.

Q With Goodrich?

A Yes.

Q And Firestone?

A Yes.

THE COURT: How did you get familiar with those companies?

THE WITNESS: How did I get to be familiar? We had a Firestone and Goodrich plant and I talked with the presidents of their locals.

THE COURT: Of their unions?

THE WITNESS: Yes.

Q Do you have a Goodrich plant in your area?

A Yes.

Q And a Firestone plant in the area?

A Yes.

Q Were those the only plants of Firestone and Goodrich to your knowledge? Tire plants of the whole company?

A No.

Q They have other plants?

A They have other plants.

Q When?

A As far as I can recollect -- this has been ten years ago and I am trying to remember as much as I can.

Q Tell me about the tube department. Do you know anything about the operations of the tube department?

A Yes.

Q Do you know whether that was a profitable aspect or part of the company's business?

A They claimed it wasn't.

Q What?

A They claimed it wasn't. The tubes were going out of business and they were going to shut it down and we tried to negotiate a 25 per cent wage reduction for them in order to keep it operating. They refused to negotiate.

Q Was that at a time when tubeless tires were coming into production throughout the industry?

A No, tubeless tires were already in. We were making tubes after other plants had stopped making tubes.

A No, we had over time in the plant before Clairmont came in, yes.

Q You suggested a few minutes ago that the layoffs might well have been due to lack of sales?

A I would say prior to the time Clairmont came in, they were even recalling some of our employees back for summer help.

Q But you can't say whether there was work to be done by these employees or whether they were laid off for lack of work?

A No.

THE COURT: The answer is no, you can't?

THE WITNESS: I can't recall.

Q You testified that when Mr. Clairmont became chairman in September that it was announced that he had fired Mr. Garthwaite. Would you describe that announcement for me, please. Where did you get that announcement?

A Well, that was the saying in the Conshohocken plant and around that area that we knew Chirmont was moving in and we figured he was getting rid of the Garthwaites and this is probably the way.

Q So there was no announcement that Claimont had fired Garthwaite. That was the talk in the Conshohocken community, is that right?

A That was our feeling, right.

Q Was that the talk in local 227?

A Yes.

Q Was that talk fostered by you?

A No, no.

Q You didn't care much for Mr. ~~Clarimont~~ Clairmont, did you?

A From his past records, no, I did not.

Q In the course of the negotiations --

THE COURT: What did you know about his past record?

THE WITNESS: I knew that he was in Atlas Plywood and what he had done there and right after he came into Lee Tire in the month of September, there was a book out called "A Guide to Wall Street" and it sold in our area for about $3. I believe this book sold at Korvettes and evidently it was the biggest seller in our area and after reading this book and then reading also about Clairmont in Fortune Magazine and so forth and following what he was doing at Lee Tire, which was the same thing that he did in Atlas Plywood and these other places he was involved in, it seemed we knew what was going to happen before it happened by reading this book.

Q I see. Now, you said that you first met him,

Then there was a followup meeting back in our plant in Conshohocken pertaining to that same thing.

Q At that meeting in Akron, didn't Mr. Clairmont tell you, whether you believed it or not, that he needed your cooperation for the purpose of keeping the plant going and that he was not a liquidator?

A Yes, he did. He also did this to the other plants.

Q Did you make any suggestions at that meeting about how the company might overcome its problems?

A At that meeting in Akron?

Q Yes.

A I believe we had an afternoon meeting, I am not quite sure, and we discussed several problems in the plant and we discussed probably what the company should do in order to improve the plant, yes.

Q Did you make any suggestions I asked you?

A I believe we talked about the pressure that was being put on the tire builders as far as the industrial engineers coming up and checking on the moves and different things. I forget all we discussed, but there were discussions.

Q What kind of pressure was being put on the tire builders by the supervisors coming out?

MR. AUERBACH: He said engineers.

Q Engineers, okay?

A Pardon?

Q What was this pressure that was going on that you objected to?

A It wasn't me, myself. Different chief committeemen had brought up different complaints about their particular division which was discussed on both sides. That was just about it.

Q Were you in agreement with the fact that the company was in trouble?

A At that particular time?

Q Yes, in October 1962.

A I couldn't believe it, no. I couldn't agree because working for this company as long as I have, I couldn't picture them in trouble at that time.

Q You heard your counsel here yesterday state that at the time there was no possible alternative to putting six million dollars or something like that of new capital into the company or ~~like we dating~~ liquidating it ~~because~~ because its position otherwise was hopeless. Did you hear your counsel state that yesterday?

MR. AUERBACH: I don't recall, before the witness answers, Idon't recall that I mentioned any

of business unless someone invested a substantial amount of money, whether it was $6 million or not.

A I agree that the company had to spend money to improve the plant. Otherwise they would go out of business.

MR. AUERBACH: Excuse me, your Honor, if he wants to quote me, I think he should quote me correctly.

I said that it called for a large infusion of capital along with a development of sales. You can't take one without the other.

THE COURT: But you did say, as I recollect it, that a prudent businessman would not put in that infusion because there was no guarantee or even probability that the sales would result.

MR. AUERBACH: That is correct.

Q You considered this to be a viable economic proposition in 1962, the fall of 1962, didn't you, Mr. Hess?

A Yes, sir.

Q Am I correct that you also felt that the business was in such a state that it could continue to operate profitably if you just stuck with the provisions of the 1961 contract?

A Yes.

Q And you also thought,I take it, at least in June of 1963 or May of 1963, that the company was profitable enough to pay you an increase in wages and fringe benefits?

A Repeat that question, please.

Q In the spring of 1963 you also thought that the company was in a sufficiently viable state so that they could even afford to pay you an increase inwages and fringe benefits?

A Yes, I proposed an increase in 1963.

THE COURT: We know you proposed it. Did you think they could pay it and still make a profit?

THE WITNESS: At that time, yes.

THE COURT: You did think so?

THE WITNESS: Yes.

Q Did you have anything to do with the negotiations about funding the past service credit to the pension plan?

A I was involved, yes.

Q Was that funding going to add an additional financial burden on the company?

A It was brought out at a later date that it would, yes.

Q I beg your pardon, Mr. Hess.

* * * * *

and we intend to have him testify to them.

THE COURT: I see.

These other things that were mentioned, the closing of the tube business and the closing of the hard rubber business, it must be a matter of record when that happened. When were those?

MR. TAYLOR: Your Honor, the tube department was closed in April 1963 and the back mill or hard rubber department was closed in May 1963.

Later in time than the witness testified. He said late '62 or early '63 and the record shows very clearly and Mr. Heinrich agreed a moment ago.

THE COURT: There is no dispute?

MR. TAYLOR: There is no dispute on ~~those~~ those dates.

Q Mr. Hess, you testified this morning that you knew that the company had lost the Phillips account. Would you tell us how much of the company's business, if you know, tire business was represented by the Phillips account?

A A good percentage of it. I didn't know this until I believe it was the October 31 meeting when he brought this out in Akron, Ohio, with the international officer present and so forth that they

lost Phillips business.

THE COURT: That is the first you heard of it?

THE WITNESS: Yes. I heard that they were losing, Phillips business was going down in the plant, but I didn't know they lost it altogether.

Q Did you know that back in 1957 the Phillips Company had announced to the company that they were going to phase out all of their business with Lee?

A Not until Clairmont told us that at the meeting in October.

Q Did you notice any drop in the number of tires and so forth which were made and dispatched to Phillips?

A Yes, there was a drop, but I believe we had other replacement tires which we were making at the time. We practically didn't notice it. We noticed a drop for Phillips, but we had other replacement tires we were making.

THE COURT: Did Phillips tires go outunder the Phillips trademark or Lee trademark?

MR. HEINRICH: Phillips. They put it under the name of Phillips 66 brand.

THE WITNESS: We made other tires at the plant

also, replacement tires.

Q What kind of tires did you specialize in let's say prior to or in the late '50s? Four-ply tires?

A In the late '50s?

Q Yes.

A Yes, sir.

Q Was there a time when the tire market became considerably more partial to two-ply replacement tires?

A Yes, sir.

Q When did that development in the tire market come?

A I can't recall, but I remember it. I can't recall when it came about.

THE COURT: A replacement tire, I assume, is a tire you sell not to the automobile manufacturer, but to the customer when his original tire wears out, is that what a replacement ~~tires~~ tire is?

MR. TAYLOR: Yes.

Q Lee's business was replacement tires, was it not?

A Replacement tires, right.

Q They didn't have any contracts that you

know of to the automobile companies to furnish tires in the beginning?

A No, they did not.

Q When two-ply tires became a big deal in the market, do you know whether Lee began to make them?

A I believe they did. I am not quite sure. I recall two-ply tires being made there, yes.

Q When would you say that Lee began to make two-ply tires?

A I can't recall.

Q Now, you testified this morning that you and the rest of the union representatives made no response to Mr. Clairmont at all at this first meeting?

A In Akron?

Q In Akron.

A He called the meeting and wanted to discuss different things. Mostly I believe with the international officers. He invited us up. This is when he stated that I believe he became chairman of the board and so forth, but like international president Burdon said at the time, we were not there to negotiate, but we listened. We weren't asked to make any response to begin with.

Q Did you ask any substantial questions about what he was telling you?

A Repeat the question?

Q Did you ask any questions about the information that he was giving you?

A No.

Q Is it your testimony that all of this bad news was absolutely out of the blue for you and the international union?

A No, we sort of expected it after reading those books and from what we had heard about Clairmont.

Q As far as your knowledge of the company was concerned, you had no idea of the existence of the situation which he was putting to you?

A No.

Q No?

A No. Not that I can recall.

Q Is it safe to say that your personal reaction was that you didn't believe him?

A Yes, sir.

Q What was the genesis -- who called the second meeting in November?

A The second meeting in November I believe was called by the international president George Burdon.

THE COURT: That is the one that Clairmont didn't come to?

THE WITNESS: He did attend the second meeting in Akron.

THE COURT: The second meeting in November.

MR. MOSS: I am talking about the second meeting which was the first meeting in November.

A The first meeting in November, yes, that was a followup meeting of the meeting in October.

THE COURT: Now that you are clear as to what we are talking about it, who called it?

THE WITNESS: Mr. Conway called that meeting. Mr. Joseph Conway.

Q Am I correct that at that meeting the company went into details with you about what you call the six point program that Mr. Clairmont had indicated might be necessary?

A This was a followup meeting on the six point program which he spoke about in Akron, yes.

Q We are talking about the plant at the moment in 1962?

A Yes, this is in 1962.

Q Before we go back to what you testified about Mr. Conway, I had understood your testimony to be that prior to Mr. Clairmont's coming around, you never had any problems with the management?

A We had grievances and we sat down and settled them.

As a matter of fact, I can count arbitration cases we had with that company. I believe I wouldn't be lying if I said we had over five arbitrations with the company from the time the union came in up until Clairmont's time. We settled our problems without going to arbitration.

Q Tell me about any of the problems that you had with the prior management which dealt with problems of the company's losing money and needing relief under the collective bargaining agreement, the working agreement; tell me about them.

A I don't know of any problems.

Q You don't know of any, so up ~~on~~ to the time that Mr. Clairmont was around, you never had any problems of that sort with the company, right?

A When Mr. Clairmont came around, it seemed the roof fell in. I don't know what happened.

Q Now, tell me about Mr. Conway. What kind of question was it at that meeting which you say indicated that Mr. Conway had no authority to discuss this six-point program with you?

A I wouldn't say he had no authority. Mr. Conway was told what to do by Clairmont. This came out in Mr. Conway's own mouth. He would come in and state, this is what I have to do and so forth and so on.

We, as the union, didn't like this. We thought if Clairmont had so much to say and he told Mr. Conway to do this that he should automatically be in here with Mr. Conway and explain it.

If we would come back and give Mr. Conway any response, he couldn't give us a yes or no on it. He would have to get back with Clairmont or his committee and then let us know at a later date.

Q Your minutes of that meeting of November 13 indicate that you didn't give anybody any response.

A No, we didn't. We stated at that time that we would like to have another meeting with Mr. Clairmont in on it.

Q You read over the minutes of that meeting this

statement, what is your present recollection of your then intention?

THE WITNESS: No.

THECOURT: Did you intend to change it?

THE WITNESS: At that time?

THE COURT: Yes.

THE WITNESS: No, not at that time.

Q Regardless of what Mr. Clairmont said to you in the meeting of November 16th or elsewhere, you had no intention of meeting any of his six point proposals at that time?

A No, sir, not at that time. We figured we were being put in the same fix as ~~that of plywood,~~ Atlas Plywood the other outfit.

Q You also testified to your counsel this morning that you had agreed to allow super seniority and then he asked you if there were any other concessions to requests made at these meetings and you said yes.

It has developed now that your claim to have agreed to super seniority came some time in the fall of 1963 or the beginning of 1964, am I right?

A No, this was prior to the work stoppage. Maybe I am confused --

Q Super seniority?

A No,this was prior to the work stoppage. This was

had 95 per cent. It depends.

Q So in your testimony the other day you did not intend to imply that this off standard problem, which existed at Conshohocken, was exclusive or unique to the Conshohocken plant?

A It varies. It is not only for our plant, but different plants.

Q The situation exists in most plants and they solve it in similar ways by a contract provision, right?

A Right.

Q On page 135 of the transcript of your testimony the other day, you were discussing the meetings with Mr. Clairmont in October of '62 and then October 31 and then a meeting with Conway and somebody else without Clairmont on November 13 and then a meeting with Mr. Clairmont on November 17, '62. If I said '61, I meant '62, right?

A Right.

Q Your counsel asked you if it wasn't true that you had a working agreement, a collective bargaining agreement, which was in effect at that time and remained in full force and effect until the next June, June 30, '63, right?

A Right.

Q Now, isn't it a fact that the reason that you were meeting with Clairmont and other people in October and November of 1962 was because those were negotiations which the company had entered into with theunion with respect to welfare agreement and that the company at that time was not making any demands on you to negotiate the working agreement?

A I disagree. At those meetings we di ssed the six-point program that Clairmont had brought up

Q But the purpose of those meetings and ~~its~~ the purpose of the meetings you had with the company from sometime in June or July of 1962 were really revolving around whether or not there was going to be any amendment to the funding provision of the 1961 welfare agreement, isn't that right?

A No. He did discuss thepension and the funding, but that was about it.

Q The results of all those meetings was an amendment to the welfare agreement, which was signed on December 17, 1962, am I right, and which is an exhibit in evidence? Isn't that right, Mr. Hess?

A I don't know. I can't recall. I mean if I could see it, maybe I could tell you.

Q Mr. Hess, I show you what has been received

rp3 Hess-cross

MR. MOSS: It is, your Honor.

THE COURT: I gather your counsel says that it is not a void agreement.

MR. TAYLOR: It is a valid agreement. It was subsequently signed in one fashion or another.

THE COURT: That is beside the point. It is interesting, but it is beside the point. All he is trying to do is refresh his recollection and because he asks you it doesn't have to refresh your recollection. You can say, "No, it doesn't refresh my recollection."

MR. TAYLOR: I believe it would be appropriate to restate the question in simple form. The witness may be confused.

Q Mr. Hess, looking at this agreement which was signed on December 17, I would like to know if that refreshes your recollection that the negotiations that you have been talking about, the meetings that you had, with the various company officials and with Mr. Clairmont beginning in the summer of 1962 and going through October of 1962 -- two meetings in November of 1962 and this agreement, were about changes in the welfare agreement and not an attempt to renegotiate at that time the working agreement?

A We have discussed the welfare agreement but we also discussed the working agreement.

Q It is your contention that at that time Mr. Clairmont and other people in the company were actively seeking an immediate change in the working agreement?

A The 6-point program that he presented to us.

Q They wanted that to be done immediately, right?

A Yes, they were asking for relief. They needed that relief, they claimed.

Q You weren't giving it?

MR. TAYLOR: The witness testified to what the union did in regard to the 6-point program, your Honor.

THE COURT: There is no objection to asking it again on cross-examination.

A I believe prior to the deadline we did agree to the reevaluation that the company requested of us; we agreed to this provided we had a third party. If we had a problem we could go to a third party.

Now, the company negotiating committee stated -- as a matter of fact, we agreed to two things: vacations plus the reevaluation of jobs, and we presented it to the company.

They stated they would take it back to their board and give us an answer. They came back and turned us down because we asked for the third party.

Q Mr. Hess, I don't want to cut you off, but I

rp5 Hess-cross

am trying to go through this chronologically.

In the fall of 1962 Mr. Clairmont put before you a 6-point program on which he said he needed relief, right?

A Right.

Q And you weren't giving it at that time?

A Not at that time.

Q In your testimony the other day you also talked about the fact that you were aware that the company lost the Phillips account?

A Yes, sir.

Q You then testified that you learned that the company had been given a five-year notice by Phillips they were going to move their business elsewhere.

Can you tell me when you first got that news?

A Yes. This is at the meeting Clairmont called with the International I believe in Akron, Ohio. That is the first I heard this.

Q Do you mean October 31 or April 16,1963, meeting?

A The first meeting in October.

Q In October?

A Yes.

THE COURT: October, 1962?

THE WITNESS: Yes. I am sorry, Judge, if I

can't hear, but this left ear of mine is a little --

THE COURT: I will try to talk louder.

THE WITNESS: Right.

Q This was in 1962, right?

A Right.

Q And you learned then that they had been given a five-year notice. Do you know when this five-year notice had been given?

A No, I can't recall. It was probably stated, but I can't recall.

THE COURT: You probably knew then, but you don't remember now, is that what you are saying?

THE WITNESS: Yes.

Q Would it refresh your recollection if I told you that that notice was given in 1958 or 1957?

A It might have been.

MR. MOSS: It is 1957.

A It might have been, because Clairmont stated that the five years was up I believe when we had that meeting in Akron.

THE COURT: Didn't you know that before? You must have seen the number of Phillips tires diminishing?

THE WITNESS: Yes, we did, but we had other replacement tires. We were really going strong at the time

Clairmont came in. It started dwindling down. Phillips were going down prior.

Q You also testified that the company had done nothing about the loss of the Phillips business. Did you mean that Mr. Clairmont told you that or that was your observation that up to the time you learned this the company had done nothing about it?

A Mr. Clairmont brought this out to the International and both committees.

Q So am I correct he was suggesting that prior management had done nothing about it, is that right?

A Yes, sir. He stated they needed new leadership as far as management is concerned.

Q Your testimony that you gave the other day was not intended to imply that Mr. Clairmont was doing nothing about it?

A Clairmont himself wasn't doing anything about it, but in my opinion --

Q He said he was trying to do something about it, didn't he?

A Yes. This is why he subcontracted our tires out to other customers, I guess.

Q He didn't subcontract your tires out until you struck the plant, did he?

as the person they would be glad to have make the study which the company and the union wanted?

A I can't recall. I don't know if Clairmont made the recommendation and the International went along with it or what.

But I know this same firm is the same firm that took the surveys at Atlas Plywood.

Q The answer to my question is you don't know whether the Strong-Narovec Company was recommended to Clairmont by the International Union?

A I can't recall.

Q Do you recall at that meeting Clairmont said that he really needed a survey of marketing, an analysis of prices at which they would be able to sell so they could keep on doing business?

A Probably.

Q Do you recall that President Burdon said they weren't going along with any marketing survey of what the company's price should be?

A I can't recall. I know President Burdon said they would go along with anything that pertains to production in the plant.

Q Do you recall that President Burdon said that they weren't interested in anything except the cost in the

fifteen minutes, you pick a convenient time.

Q The other day I believe you testified, Mr. Hess, that you were familiar with the contents of the Strong-Narovec report before or after the time that you were in negotiations with the company?

A I believe I stated I went through it, I glanced through it. I couldn't remember if I had a copy or not, but, to be frank with you, if I read it I wouldn't have understood it. And, more or less, I had a field representative from the International who handled that part of it.

Q Mr. ~~Sabo~~ Sabol?

A Mr. Mike ~~Sabo~~ Sabol, yes.

Q It is your testimony that you didn't understand the Strong-Narovec report?

A I probably wouldn't have.

THE COURT: The testimony is he probably wouldn't have.

Q But I thought you read it?

A I probably glanced through it.

THE COURT: I read a lot of things I don't understand, including some briefs.

Q If you had read that the per man hour cost of hourly wages and fringe benefits and per pound costs reported by the company in 1958 to be $3.168 and in 1963

were reported to be $3.923, you would have understood that the cost per man hour had gone up, wouldn'tyou?

MR. AUERBACH: Objection, we don't contest the report. I think I stated that before. There is no disagreement insofar as that report.

THE COURT: You don't disagree with it, although you don't understand it?

THE WITNESS: I had guidance from the International Union. There was no disagreement as far as the International is concerned.

THE COURT: The International told you that was a proper report and you accepted that, is that what I understand you are saying?

THE WITNESS: Yes.

Q You told us also that at the meeting of April 16, I believe, that the International asked the company representatives if the company got back on their feet would they go back and give the employees back the pension rights which they were wanting to lessen?

A Yes.

Q You testified that the company didn't give you any response?

A No response, that is right.

Q Isn't it a fact Mr. Clairmont said when the

company got back on its feet they would, of course, return to the benefits that they were asking you temporarily to give up but the company simply couldn't afford them now until it was in a profitable position?

A No. I remember him asking that question and there was no response at all from Mr. Clairmont.

THE COURT: Do the minutes of this meeting show anything about that?

MR. MOSS: No, sir.

Q Mr. Hess, the company first gave its notification that it wished to make new proposals about the working agreement I believe some time in April and you gave a similar notice that you wanted to give some ten days later?

A I believe it was April 18 the company notified us in writing that they wanted to terminate our present agreement, yes. And I believe it was on April 29 we sent a letter to the company stating that we would like to reopen and amend our 1961 agreement.

Q When was it with respect to your letter that you would like to reopen and amend the agreement that you began to formulate the union's proposals to amend the agreement?

A It didn't take long, because as far as the industry was concerned, they had finished negotiating and the pattern was set. All we did was take the wage increase

and fringe benefits and put them on paper and they were our proposals to the company.

Q When did the negotiations begin?

A When did they begin?

Q Yes.

A I would say some time in May.

MR. MOSS: Your Honor, in the pretrial order the parties stipulated in paragraph 10 of Roman Numeral I --

THE COURT: What page?

MR. MOSS: Page 10. That the first negotiating session between the company and the union as to terms upon which either was willing to enter into a new collective bargaining agreement effective upon the expiration of the original agreement took place on May 29, 1963.

And thereafter the company and union held negotiating sessions with respect to the new working agreement on May 29, 31 and June 7, 10, 11 and 14, and no agreement was reached on any of the substantial points of disagreement.

Q Mr. Hess, the other day in your testimony, on page 167 of the transcript, you were asked, "Was there any change from the time of the beginning of the negotiations in the spring of 1963 and the time when the work stoppage occurred in the company's position, basic position, negotiating for a new contract?" And you answered, "No."

Am I not correct that the proposal which the company made to you in the first negotiating session was a 25 per cent wage decrease?

A Yes.

Q Isn't it true that before the work stoppage occurred the company had at least reduced that to 20 per cent?

A Yes.

Q That had been a major change?

A We were working on a day-to-day basis after June 30, yes, sir.

Q So your testimony then the other day was incorrect?

A We also --

Q I just asked you whether your testimony the other day was incorrect?

THE COURT: He doesn't say that was a major change.

Q You didn't consider a 5 per cent drop in the wage decrease a major change?

A No, I didn't.

Q You also testified tha other day that the company at all times demanded a job evaluation program which was to be at the sole discretion of the company?

Q The same industrial engineer shall be employed to establish all such disputed jobs during the term of this agreement. The decision of this industrial engineer shall be final. The cost of employing this engineer shall be borne equally by both the company and the union, is that right?

A Right.

Q It says the industrial engineer mentioned above will be selected byasking the American Arbitration Association to submit the names of five firms and the union and the company will ultimately strike out all names until only one remains.

You just didn't like that --

THE COURT: You rejected that?

THE WITNESS: I objected to the part where it says "The decision of the industrial engineer shall be final." It says here -- it doesn't state here that we would have grievance procedure or arbitration. It states that the American Arbitration Association shall select five names to the company and the union to pick to take the study, but all we were asking for is if we disagreed that we would have the right to arbitrate this.

Q You wanted to arbitrate it a special way under the union contract?

THE COURT: You wanted to arbitrate after the engineer that you had both selected made a decision, you wanted to be able to arbitrate that decision?

THE WITNESS: If there was any protest, we felt we should have a right to arbitrate this. That is all we asked for there.

Q There is no question about the fact that the company in this proposal had retreated from its position that it should have undisputed discretion to evaluate the jobs?

A We weren't arguing that. We wanted them to have that right to evaluate the jobs, but if we thought it was not right or it was not done in the proper way or if we felt that the industrial engineer was off, we felt that we should have the right to arbitrate it.

Q You didn't think that the provision for the selection of a person who was going to decide finally would suit you, is that right?

THE COURT: I take it, for my information, this section 10.02 refers to a section in the previous proposal by the company?

MR. MOSS: I believe so, sir, yes.

THE COURT: That proposal, I gather from your question, was that they should reclassify jobs at their

got a new agreement after June 30, yes.

Q So you were not intending here to give the impression that prior to July 16 you had agreed that if the company would extend the old agreement for two years, that that would be satisfactory to you?

A We agreed to let the company extend the agreement, all the agreements for one year. We had agreed to this with the company to extend all agreements for one year and bring somebody in to check the costs and if the costs did go up for the company, we were willing to go along with them.

Q That is an agreement which you -- that is not an agreement with the company, that was an offer you made to the company, is that right?

A Yes, this was an offer we made.

Q When did you make that?

A Prior to the work stoppage.

Q Prior to July 16?

A Yes, as far as I can remember it was prior thereto.

Q Do you have any minutes which show that offer?

A Pardon me?

Q Do you have any minutes that show that offer?

A I don't know. Icant recall. I didn't go through them.

Q You are suggesting that you made it to go for a year at which time the company could call in some expert to check their costs?

A Yes.

Q And if there were any increase in the costs, to discuss with them what to do about it, is that right?

A We would work something out at that time, yes. That is to extend all our agreements.

Q The company had already had a management expert in to check its costs through the Strong Narovich report, hadn't they?

A Yes.

Q The company had already told you that its costs were already excessive, had they not, so that wasn't much of an offer that they should keep their already excessive costs and go for a year and then if the costs went up in that year, you might consider doing something about it?

A We figured as the employees we would do everything possible we could do to cut costs in the plants and we wanted to work this for one year to see how it would work out.

Q What proposals did you make to cut costs? You weren't willing to go along with super seniority. What were your proposals to cut the costs in that year?

A I don't know why you keep saying we weren't willing to go along with super seniority. We did agree with super seniority for tire builders.

Q You were still arguing about it throughout this entire period in negotiations?

A In negotiations. Can you show me where we argued super seniority in the negotiations?

Q Can you show me where you agreed that you would allow super seniority in the coming contract?

A I told you if we were to have negotiated it, we did at one time concede everything that the company had requested.

Q We will get to that. You tell me when you think that was, Mr. Hess, come on. When do you think you agreed to everything?

A When?

Q Yes.

A I would say in 1964 at the Valley Forge Hotel in Norristown.

Q When we get to 1964 we will get to that, okay. We are talking now about the period before the strike and

to prove it to me than just announce it.

Am I correct that on June 10 you were president of the local then, right?

A Yes.

Q You told the company's negotiating committee at that time that you and your members had gotten together and taken a strike ~~sheet~~ vote, right?

A It is a practice --

Q I just asked you: Had you done it?

A Yes.

Q You had taken a strike vote, right, on June 10?

A Yes.

Q The negotiations had only begun on May 29, right?

A Yes, sir.

Q On June 25 did the company present to you a proposal to extend -- formally to extend the working agreemnt for an indefinite period duringthe course of negotiations provided that you would agree to give them seven days' notice of an intention to strike and they would give you seven days' notice of an intention not to continue the agreement in effect?

A They gave us -- they asked us for an extension of time. Could I see a copy of that? You have the

document there, I imagine, so I could explain it to you.

Q I show you a document, which is dated June 25, 1963, addressed to you, sent registered mail, return receipt requested, with an enclosure called a memorandum of understanding, dated June 24, 1963. I ask you if you got that letter and that enclosure?

MR. TAYLOR: Has it been marked? We have never seen it then.

MR. MOSS: Mr. Hess must have seen it, Mr. Taylor, and how were we to know that he was going to deny that this agreement had been offered to him and rejected?

THE WITNESS: I didn't deny it yet.

Q I know you haven't.

MR. TAYLOR: Let the witness look at the document for a moment.

THE COURT: This extension agreement that you are now showing the witness, is that the one that is referred to paragraph 13 on the bottom of page 10 and the top of page 11 of the Order as having been rejected? ~~of the order?~~

MR. MOSS: Yes, sir.

(Pause)

MR. TAYLOR: Your Honor, if it please the Court, document No. 81A, which has been offered in

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Q You rejected that proposal, did you not?

A No. We had questions on the proposal.

When we received this at the union office, we had a meeting with our negotiating committee and there were questions that came up and I called Mr. Conway pertaining to this and he in turn got Mr. Bernstein on the telephone. I forget the question, he referred that question to Mr. Bernstein who was the company's attorney at that time and he got on the phone and he said, well, if there is going to be a lot of questions asked about this, forget about it and this is how that was rejected. He told us if we were going to start asking a lot of questions about it to forget about it.

rp2 Hess-cross

and there are documents referring to the matters in question.

THE COURT: It was just odd to find a rejection of an agreement without finding the agreement.

MR. AUERBACH: We have no objection to this being received in evidence.

xx (Exhibit 92-A received in evidence.)

THE COURT: That is a proposal of what date?

MR. MOSS: June 25, 1963, to extend the agreement for an indefinite time on certain terms and conditions stated in the proposal.

Q I am correct, am I not, Mr. Hess, that one of the reasons that the company stated to you that they wished to have this agreement was to give them some opportunity before a strike to get their finished tires and other things out of the plant, is that right?

A I would like to say this, the company didn't state --

Q Will you answer that question for me and then if you want to explain --

A Did the company state that to me?

Q Yes.

A Only by letter, and we tried toquestion the company on this and they told me if we asked a lot of

rp4 Hess-cross

THE WITNESS: No. Certain questions, from the board. They wanted us to get back to the company.

THE COURT: Do you have any recollection of the type of questions they were?

THE WITNESS: No. I believe at the time I could think, but at the present time I can't. But there were questions that the board wanted to know.

THE COURT: I understand that.

Q You don't know what these questions were?

A We didn't even have a chance to ask them.

Q You must have raised them in your mind because you wanted to ask them, right?

A They put the company's attorney on the telephone and he told us that if there was to be a lot of questions that is the end of it.

Q You had some questions. What were those questions?

A I had questions that the board members asked me.

Q What were they?

A I can't recall.

Q Did the fact that the company would have seven days in which to ship out its finished tires before you could strike and they didn't want that to happen?

A The company at June 7, they had all their finish-

ed tires out of the plant, their molds out of the plant except for the molds that we could work on a day-to-day basis.

Their molds, tires, all their finished products were already out of the plant as of June 7.

The only thing they had in that plant were the molds for tires that we could build from day to day up to June 30. The company themselves knew they were shutting that plant down June 30 or soon after, so why they asked for the additional seven days I don't know. Maybe to get the rest of the tires out. Maybe that was one of the questions I wanted to question the company about.

Q What were you all doing, that production gang in there from day to day, making tires, weren't you?

A Not all the time. We were cleaning, doing everything. They had them doing everything.

Q The company was producing tires?

A They were producing as many tires as they could produce. As far as they were producing them they were getting them out.

Q I show you what has been marked as 42 in evidence and ask you if that isn't a telegram thatyou sent specifically rejecting that company offer?

A We rejected the company offer for seven days

Clairmont was aware you were suspicious.

Q He discussed the wage reduction with you. Do you remember whether he discussed with you at that time the wage reduction which had recently been negotiated between the United Rubber Workers and Dunlop Company?

A I can't recall.

Q You do recall that around that time before the company asked for a wage reduction the United Rubber Workers granted a wage reduction for the Dunlop Company in order to get them in better shape, are you not?

A I don't know.

THE COURT: Dunlop is not the Big Four?

MR. MOSS: I don't think so.

A I believe Mr. Clairmont -- isn't this the meeting where we discussed the profit sharing thing and productivity that was brought by the local union?

THE COURT: Wait a minute, Mr. Hess, one thing at a time. It is news to me, so maybe I can get it straightened out.

Was there ever an agreement between the union and Dunlop to reduce Dunlop's wages?

THE WITNESS: No.

THE COURT: There never was?

THE WITNESS: Not that I know of.

Q Between the United Rubber Workers and the Dunlop Company to reduce wages around this time, before these negotiations began?

A I don't know. I believe we will have somebody here to testify to this later. I couldn't tell you offhand.

Q You don't know it?

A No.

MR. TAYLOR: You are referring to the Dunlop Tire Manufacturing Company?

MR. MOSS: Yes. And a contract with United Rubber Workers.

Q Mr. Hess, I believe you previously identified or agreed you had received this letter from Mr. Heinrich and Mr. Conway dated June 28, which is in evidence as Exhibit 13.

I draw your attention to Section 4 which says:

"We further point to a certain prominent tire manufacturer who recently received a substantial wage reduction from its employees who are members of your union thus enabling that company to improve its competitive position even though that company was working at almost full capacity while our company due to its uncompetitive position has not been able to produce at more than one-third of

its capacity."

You do agree that was in the letter to you?

A If it is in the letter you just read it to me.

THE COURT: Do you remember now that he read it, do you remember reading that at the time?

THE WITNESS: No -- wait a minute.

THE COURT: The question does not refresh your recollection? It doesn't say Dunlop, but does this refresh your recollection as to whether that was --

THE WITNESS: I would say this: are you telling me that the International Union gave permission for this to be done?

Q Yes, I am asking you about at the time that Clairmont was talking to you on July 3rd he told you or you were aware from Heinrich's letter or something at least that the company claimed that the United Rubber Workers entered into a collective bargaining agreement with Dunlop Tire Company allowing them a decrease in their wages?

A The International Union, they can't agree to anything. It is up to the members of the various locals to make an agreement. The International couldn't tell anybody what to do.

Q Then let me rephrase the question. Were you aware at the time that the local union representing the

United Rubber Workers employees at the Dunlop Tire Company entered into an agreement with the approval of the International Union that there would be a decrease in the Dunlop Tire employees' wages?

A I can't recall.

Q All right.

A That is what the company claims, but maybe I believe we will have somebody from the International. You could better ask them.

THE COURT: You don't remember?

THE WITNESS: I don't remember.

THE COURT: That is all you can establish now.

Q At that meeting in talking about the job evaluation program that Clairmont said to you that at Mohawk the union permitted job evaluation entirely on the company's part without any interference by the union?

A No.

Q But the main thing I want to get is that at the meeting --

THE COURT: You can't shake your head, the stenographer can't hear that. You say no?

THE WITNESS: No.

Q You don't remember he said anything like that?

A No.

Q Now, am I not correct at that meeting Mr. Clairmont presented two specific plans to you, to make the wage decrease more palatable and one of them was a profit-sharing plan and one was a plan which was to share with the employees, the production employees, the union employees, any increase in the company's earnings which was based upon an increase in productivity?

A Yes. I believe this was the purpose of that meeting, talking about profit sharing and productivity, because I believe the local themselves wrote up a proposal on productivity and presented it to the company at the time and Clairmont stated that he would go for something like this provided we would go along with everything that he stated that he wanted.

And he would go along for the profit sharing and productivity but we would still take a 20 per cent wage cut and give up our holiday.

Q Isn't it a fact that Mr. Clairmont made a proposal which he claimed if adopted by the union would go a long way to productivity sharing to make up for the employees the wage loss they would have?

A Yes, sir.

Q That is right?

A We accepted this.

Q You did?

A But he says under one condition, that we would have to accept everything.

Q You would have to have the wage cut?

A Not only the wage cut, go from A to Z, read everything from A to Z.

Q The wage cut was what you ~~bought?~~ balked at?

A No, you have a copy of the terms and conditions what we were forced out.

Q All right. You rejected Mr. Clairmont's proposal for a productivity sharing, didn't you?

A We would accept it, but he told us we would have to accept everything in order for us to accept that. We would have done anything to get the plant going.

Q You told him as early as July 3 you would accept the productivity sharing?

A As far as I can recall, I don't know, but we talked about this and were willing to go, and then he stated that we would have to accept everything, not just the productivity plan or the profit-sharing plan, we have to accept everything.

Q Do you have any minutes to support that?

A I don't know. There are lots of minutes there.

THE COURT: Do you have any minutes of that meeting?

MR. AUERBACH: We have an affidavit of Mr. Hess given in July, 1963, to the Unemployment Insurance Board just the week after the strike started.

THE COURT: That is slightly different than minutes, an affidavit made in litigation is slightly different than contemporaneous minutes.

MR. AUERBACH: It was within a matter of weeks.

THECOURT: The purpose was obviously not to record but to persuade. I am not saying it wasn't a true affidavit but I am saying the purpose is different.

MR. AUERBACH: If you want something that will refresh his recollection.

MR. MOSS: I don't want anything to refresh his recollection. I want to know if there is any minutes he has to support what he says.

THE WITNESS: I would have to check the minutes.

Q Isn't it a fact that you and your group at that meeting rejected at that meeting the proposition that Mr. Clairmont made for profit sharing and productivity sharing?

A We would accept them, but we rejected everything from A to Z. We would have accepted the proposal, what he stated, in order to get them we must agree to everything

he wanted, and at that time we didn't agree to everything that he wanted, so that was knocked out.

THE COURT: You would negotiate any point of proposal, is that what you are saying?

THE WITNESS: Yes.

THE COURT: Obviously he was going to get something. You are saying --

THE WITNESS: I made an offer to this and we would accept it and then he stated in order to get this you must go along with me on everything else that I asked for.

THE COURT: Obviously he would have said you must go along on the major portions, but are you telling us he said he wouldn't argue any modification whatever of the rest of his proposal?

THE WITNESS: No, he wouldn't.

THE COURT: That is what he said?

THE WITNESS: Yes, he wouldn't modify anything. We had to accept everything the way he had it.

Q Am I correct at that meeting Mr. Clairmont offered if you had any questions to send you a copy of the precise statement that he made at that meeting?

A I don't recall.

Q Did the company through Mr. Heinrich thereafter send you a precise copy of that?

THE COURT: No objection, I assume.

Received.

(Exhibit 93A was received in evidence)

Q Mr. Hess, you testified a little earlier this morning, I believe, that prior to the work stoppage on July 16 that the company was shipping molds and so forth out of the plant. Do you know whether or not the Phillips Company had been after the company to get their molds out of the plant because of the possibility of a strike?

A No, their molds were, I believe, out. Lee Tire had already lost Phillips, hadn't they?

Q You don't know whether ~~Phi-lips~~ Phillips had been after the Lee Tire Company to ship their molds out to them so they wouldn't get caught in the strike?

A I ~~don't~~ didn't know, but all molds were taken out of the Conshohocken plant and stored in two warehouses in Philadelphia.

THE COURT: It doesn't seem to me that is very relevant. Obviously, if you expect a strike, you will do your best to minimize the damages. They couldn't have been unaware that a strike was ~~an impossibility~~ a possibility in this situation.

MR. MOSS: Exactly, but I understood Mr. Hess

to be testifying that way unresponsively at the time on the grounds that he thought there was something wrong with the company having moved these things out, the tires out and so forth, although his union had said they had already taken a strike vote.

THE COURT: I don't imagine plaintiff thinks that is wrong or am I misinformed?

MR. AUERBACH: I think I would like to say something about the strike vote as a matter of law.

MR. MOSS: I don't think that is proper.

THE COURT: If a company is anticipating a strike, which obviously this company would be in the state of these negotiations, is there anything wrong with shipping stuff out so you would minimize the losses?

MR. AUERBACH: Well, it would be quite unusual just on the taking of a mere strike vote because --

THE COURT: Strike votes are a dime a dozen, but it seems to me perfectly obvious that a strike was a real possibility no matter whose motive was pure or impure.

MR. AUERBACH: We say taking it out on June 7 in light of the context here was part of their whole plan.

THE COURT: Then I am wrong.

eor7 Hess-cross

Q You don't know whether the owners of those molds had been after the company to get them out of that plant before you struck, do you?

A No.

Q You attributed the removal of those molds as part of the plan of Clairmont to close down the plant? Do you?

A Repeat your question again.

THE COURT: You just heard your counsel say he did, do you agree with him?

Q Do you attribute the removal of those molds and the tires and so forth from the plant to be part of Clairmont's plan to close down that plant?

A Yes, sir.

Q The pretrial order has agreed that there were additional meetings on July 5 and July 11 and July 12. What would you say was accomplished at those meetings, if anything?

A I can't recall. Do you have any more documents that you can show me?

Q Did the company recede from its insistence that it really needed to have a wage cut?

A You just gave me a document and I read it and he stated in there where he wanted a wage cut and where

he wanted to go along with a profit sharing thing on productivity. Like I told you, we would have agreed to this, but if you read that thing all the way through, it says he didn't get the board's approval and we have to give him a quick answer in order to get this, and if we would agree to this, we would have to agree to all his proposals.

If you read in there he wanted to cut our service pay right then and there and take it away from us and we had to agree to that in order to get this profit sharing thing and this productivity. We agreed to it.

Q What I asked you, Mr. Hess, was whether in those meetings prior to July 12 the company had withdrawn its request for a wage increase? That is all I asked you. The answer to that is no, right?

A No.

Q By the end of the July 12 meeting, had you withdrawn your adamant refusal to accept a wage decrease?

A We agreed to continue working under the old agreement.

Q That is not responsive to the question.

THE COURT: He wants to know did you ever say you would work for less money?

THE WITNESS: No, sir.

Q No?

A Not up until that date.

Q Not up to that date, right.

A Right. That I can recall.

THE COURT: The best you can do is tell us what you now recall.

Q You aren't suggesting, are you, that at any time up to the end of 1964 that you ever agreed to a wage cut at that plant, are you?

A Not that I can recall, no.

Q I beg your pardon?

A Not that I can remember.

Q Not that you can recall and you would recall if you had agreed to accept a wage cut at the plant, would you not?

A Yes, I would.

Q Yes, so you never agreed to accept a wage cut at the plant?

A Not up to that point, no.

Q Up to that point?

A The meetings in July that you are talking about.

Q I asked you if you ever agreed, ever until the end of 1964, did you ever agree to accept a wage cut at that

that plant?

A We agreed to accept everything, but I can't figure out, it was in the latter part of '64 -- '63 or '64, we agreed to give in on everything, wages and all right down the line.

THE COURT: This question only goes as far as July 13.

MR. MOSS: I went beyond that.

A I agree with him as far as July 13.

Q I took it you asserted the other day that there came a time and you say it was at the Valley Forge Hotel --

A In Norristown.

Q In Norristown that sometime in July you think of 1964 you agreed to accept all of the company's proposals?

A Yes, sir.

Q And they refused?

A Yes, sir.

Q And that offer of yours included the wage cut they wanted?

A Yes, sir.

Q And all the changes in the working agreement?

A Yes, sir.

Q And all the changes in the welfare agreement?

A That was prior to the welfare agreement --

eor10 Hess-cross

Q No, you were all talking about the welfare agreement in July of 1964, weren't you, Mr. Hess?

A This was prior to the welfare agreement. We wanted to give in on everything right to that point before we got to the welfare agreement.

Q All you mean by that is that when the company was trying to renegotiate the welfare agreement in accordance with its rights under that agreement, you weren't willing to talk about that. All you were willing to talk about was the ~~work~~ working agreement.

A It was the only thing affected at that time.

Q The company had already given notice that they wanted to renegotiate the welfare agreement, hadn't they?

A When did they give notice?

Q On May 1, 1964?

A Yes.

Q You testified to that day before yesterday?

A In May, right, you are talking about April now, right?

Q I am talking about July at the Valley Forge Hotel.

A What year?

Q 1964 when you said you gave in on everything?

A The latter part of '63 or the early part of '64

we gave in on everything. You are going back to --

Q So your present testimony is that sometime in the latter part of 1963 or the early part of 1964 you agreed to accept all of the company's proposals with respect to the working agreement, including the wage cut?

A Yes, sir.

Q And everything else?

A Yes, sir.

Q Have you got any minutes which show any such offer on your part?

A I don't know. The minutes are there, I will have to check over them.

Q Your testimony is that although the welfare agreement had not even been opened and wasn't even openable, ~~operable,~~ you offered to give in on everything, the company refused, is that right?

A I believe it states in my deposition up there, if you will read it.

Q I am just asking you now. I am not interested in what it says in your deposition. I don't think it does say that, but that is okay, your counsel can check it. That is your testimony, right?

A Yes, I'd say the committee gave in and conceded to the company on all those points prior to the welfare

negotiations, yes, sir.

Q Everything?

A Everything.

MR.MOSS: Your Honor, I think we might stop now.

THE COURT: I was going to make that suggestion. In the meantime, that will give you the weekend to find out whether there are any minutes on this one way or another.

MR. MOSS: It is really a week or ten days.

THE COURT: I will see you at 10 o'clock a week from Monday morning.

MR. AUERBACH: Yes, February 5, your Honor.

MR. TAYLOR: Did your Honor say that this Court would recess on Monday, February 12th?

THE COURT: That is correct. Monday, February 12 we won't sit.

(Adjourned to February 5, 1973, at 10 a.m.)

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wage cut to which it was attached, right?

A Without the six-point program. There are six points there.

Q Including the wage cut?

THE COURT: Maybe you didn't understand the question, but the way the record reads now, you flatly said that you would not accept the wage cut.

THE WITNESS: Right.

THE COURT: What Mr. Moss is pointing out, that you couldn't very well accept the productivity without accepting the wage cut, it didn't make any sense, so he wants to know what you meant by saying you would accept the productivity.

THE WITNESS: Well, at that time at July 3, we would not go for the wage cut, no, but at a later date, we did agree to accept everything.

Q That's what we were also discussing when the testimony ended the other day, and I asked you if you could produce any minutes of any kind, anything in writing, in which you offered to the company or where your minutes show that you offered to the company to give in to all of their demands.

Were you able to find anything in the last ten days?

A No, sir. As I told you before, I left office for a period of time and from that time, the records seem to disappear.

Q About the time of this July 3 meeting, shortly after that, did you file with the National Labor Relations Board a charge that the company was not bargaining in good faith?

A I believe the charges were filed, yes.

Q You signed the charges, did you not?

A Yes, I did.

Q What was the nature of the original charge, if you recall?

A Unfair labor charge for not bargaining in good faith.

MR. AUERBACH: Your Honor, I am going to object to any testimony with regard to the filing of the unfair labor charges because I think that the Court can take judicial notice that the acceptance of such charges by the National Labor Relations Board and the filing of a complant is a highly discretionary matter with the NLRB.

THE COURT: I agree with you there but I may not be prescient, but it seems to me from the form of Mr. Moss' question, he is asking the question to lay a groundwork for suggesting the witness has taken an inconsistent

MR. AUERBACH: He says he is not introducing it for that.

THE COURT: I understand.

MR. MOSS: Given an opportunity, I might, though.

BY MR. MOSS:

Q You signed this, right?

A Yes, sir.

MR. MOSS: I offer it in evidence.

MR. TAYLOR: Your Honor, we have not seen this particular document.

MR. MOSS: Your Honor, if objection is made to the fact they have never seen these documents before, it is absurd.

It came from their witnesses at the depositions before trial.

MR. TAYLOR: Your Honor, it has not been marked for identification before, this particular document.

There are other documents in this series and the subject has come up, obviously, in pretrial information.

MR. AUERBACH: Subject to our overall motion with regard to this line, assuming that your Honor decides to overrule that objection, we would have no objection to the introduction of this document.

THE COURT: You don't have to state that every

time. That is understood on this whole series.

MR. AUERBACH: Right.

THE COURT: You may proceed. That is accepted subject to their motion to strike.

MR. MOSS: Yes, I understand.

MR. AUERBACH: Do we have a number on it?

MR. TAYLOR: 94-A.

MR. MOSS: 94-A.

BY MR. MOSS:

Q Mr. Hess, do you know whether or not you supplied to the NLRB regional office in support of that charge factual material claimed by you to support it?

A I can't recall what was supplied.

Q The pretrial order stipulates that after that complaint was made on July 8, that there were negotiating sessions on July 5 and July 11 and July 12.

Am I correct that at those sessions, the company continued to make clear that as far as it was concerned, a wage cut was essential to its --

MR. AUERBACH: Excuse me. I think, Mr. Moss, you made a slip when you said July 8. It is dated July 3, Mr. Moss.

It is the date it was filed -- it is signed and dated July 3. That is the date, presumably, on which it

was signed by Mr. Hess. The date filed is when it is docketed, which may often be after it has left the charging party; usually is.

MR. MOSS: That appears to be true, your Honor. It is dated July 3 and filed July 8.

MR. AUERBACH: There's no showing here whether this was before or after the other sequence of events on July 3.

How significant that date is, I don't know, your Honor, but something that was dated July 3 may have been prepared before July 3.

MR. MOSS: I don't think it is significant at all. It was amended before there was a decision.

BY MR. MOSS:

Q Mr. Hess, could you answer the question I asked you?

A Could you repeat the question?

Q I told you that the pretrial order stipulated that there were, after July 3 or 8, that there were negotiating sessions on July 5, July 11 and July 12.

I ask you if I was correct that at those meetings the company made it clear that a wage reduction was essential to the new agreement as far as it was concerned?

A Yes, sir.

Q At that time, at least, you had not agreed to such a reduction?

A It was not only a reduction, it was a little bit of everything.

Q All I asked you was, by that time, you had not agreed to a wage reduction, right?

A Not at that time, no.

Q On July 16, you had a meeting?

A July 16?

Q Yes. Right.

A Yes. Yes, sir.

THE COURT: What is the question, you had not agreed?

MR. MOSS: He said he had a meeting on July 16.

THE COURT: Oh.

Q Do you recall the events of what transpired at that meeting?

A On July 16?

Q Yes.

A Yes, sir.

Q Am I correct that at the meeting, Mr. Heinrich said that there had been a meeting of the board of directors with respect to the status of the negotiations?

A Yes, sir.

A Yes. These are reports that we make out for the international during negotiations when we make out a Phase B for them, we take a strike vote and also Phase C is when the people go on strike.

Q A Phase C report is a report which the local files with the international union when the members of the local have gone out on strike?

A Yes, sir.

MR. MOSS: I offer this in evidence.

MR. AUERBACH: No objection, your Honor.

THE COURT: What number is this?

MR. MOSS: 14-A.

Q Mr. Hess, how soon after you called the company on July 16, 1963, and said that your local was going out on strike did you begin to picket the plant?

A How soon?

Q Yes.

A I believe that same day, July 16.

Q Did you continue to picket the plant daily thereafter?

A Yes, sir.

Q The purpose of the picketing was what?

A The purpose of the picketing was what? To prevent other people from going in doing our jobs and so forth.

Q So you maintained picket lines around the plant to prevent production workers from going into the plant and making rubber?

A Other people from going in to do our jobs.

Q Well, anybody from going in to do your jobs?

A Right.

Q Did you also seek to make it difficult for supervisory people and others entering the plant to do ~~your~~ their jobs?

A Not at first, I don't believe. We didn't make it difficult to them until they were doing our jobs.

We found out and the company came out in headlines and stated that they were bringing personnel, supervisory personnel, there to do our jobs and so forth.

This is when we decided that we would do it.

Q To make rubber?

A To make rubber.

Q To make rubber tires?

A To make rubber tires?

Q Yes.

A Yes.

Q You claim that the company, during the early part of this strike, was attempting to bring people in to make tires in the plant?

A I don't know if they were going to do it or not, but they sure put it in the newspaper in big headlines that they were going to get them to cross our picket line to produce tires.

Q I see. Did you try to keep out the supervisory people from coming into the plant?

A These are the people that were supposed to go in and do our jobs.

Q Did you try to keep the sales people out of the plant?

A I don't believe we did, no.

Q Did you try to keep the clerical workers out of the plant?

A No, sir.

Q Did you try to keep any trucks and people who were coming in either to deliver goods or to take goods out of the plant?

A Yes, sir.

Q Did you do it with such zeal that an injunction was finally issued by the Montgomery County Court to have you have peaceful picketing rather than the mass picketing you were doing?

A Yes, sir.

Q About that time, did the company write to you

formally and ask for your permission, the union's permission, to have the tires made elsewhere than at Conshohocken to keep the business alive?

A They told us this before we were going to go on strike.

Q I asked if they wrote you a letter asking for your agreement to that.

A I can't recall.

Q In any event, you didn't agree to have them made outside, right?

A They wrote me a letter. I probably didn't agree, no.

Q After the strike, were there other meetings between the company and the union for the purpose of negotiating an agreement?

A After the strike?

THE COURT: After the strike started.

Q After the strike started.

A Yes.

Q During those meetings, am I correct that the company continued to make clear to the union that a wage reduction was an essential, as far as the company was concerned, to re-opening the plant?

A No, sir. We had a meeting after the strike and

we conceded to the company on everything.

Q You keep saying that, Mr. Hess. So why don't you answer the question as I ask you and when you come to a time when you can fix it down when you agreed to everything, I'll be glad to hear it.

A We tried in many cases to try to come to a settlement prior to the strike. We conceded on the job evaluation and also on vacations.

Q I understand that. I asked you a simple question, whether after the strike began, the company at the meetings that you held continued to make it clear to you that as far as it was concerned, a wage reduction was essential to the re-opening of the plant?

A Are you saying at all meetings?

Q Well, let's talk about the meetings before you amended your ~~charge~~ charge to the NLRB in August.

A Yes.

Q They always made it clear up to that time?

A Right. They made it clear with every other point that they made up, too, not only wages.

Q I understand. Their program which they had laid out to you before was basically essential to re-opening the plant?

A They talked about a wage reduction, yes, sir.

Q I show you what is a document dated on the bottom August 20, 1963, and filed August 21, 1963, as a charge against the employer with the National Labor Relations Board and ask you if, to your knowledge, you ever saw that document before.

A Yes, sir.

Q That represents an amendment made some time in August to your -- the union's other charge of a refusal to bargain; am I correct?

A Yes, sir.

MR. MOSS: Your Honor, I offer that in evidence subject to the same --

THE COURT: This is number what?

MR. MOSS: 95-A.

THE COURT: These are --

MR. MOSS: It is not really "A". This is 95.

Mr. Taylor thinks, your Honor, where we are putting exhibits in which were not marked before that they ought to continue in the A series and I think that is about as good a way.

THE COURT: This is one that has not been marked before?

MR. MOSS: Yes, sir.

THE COURT: 94-A had not been marked before, either?

MR. MOSS: No, sir.

THE COURT: This is 95-A.

(Defendant's Exhibits 94-A and 95-A received in evidence.)

BY MR. MOSS:

Q Mr. Hess, that document does not say anything about how you had agreed to all the company's demands and the company had declined your concession, does it?

A No, sir.

Q So up to that time, at least, when that was signed on August 20, 1963, you had not conceded to all the company's demands then?

A No, sir.

Q Do you know whether or not the union filed material, factual material, in support of that amended charge?

A I can't recall.

Q After that charge was filed, did there continue to be negotiating sessions between the company and the union?

A Off and on, yes.

Q Am I correct that in those sessions, the company continued to make its claim, make it clear to you, that they needed a wage reduction, and did you continue to make

Mohawk for the company, and that exhibit shows that that contract was entered into on the 28 day of August 1963.

Were you aware of that agreement at the time it was made?

A Was I aware?

Q Were you aware of it?

A I know Mohawk made our tires, yes.

Q Mohawk made Lee tires?

A Right.

Q When would you say you became aware of the fact that Mohawk had made a contract with the company or the company had made a contract with Mohawk to make Lee tires?

A I can't recall. I know they tried to get Kelly Springfield to make it for them before the strike occurred but I believe they had refused.

Q Eventually you or your local became aware or the international became aware of the fact that Mohawk had an agreement with the company to make Lee tires?

A We became aware that Mohawk was making our tires, yes, sir.

Q Did you and your local make any efforts to interfere with that contract?

A Yes, sir. I went out to West Helena, Arkansas.

Q To do what?

A To talk to their local union to see if they were making them and see what they were making.

Q Your purpose was to interfere with that contract and have Mohawk stop making the tires; is that correct?

A You are saying that, I'm not.

Q What was your purpose in going out there?

A To get some information on what they were doing.

Q Then I asked you whether your local sought to interfere with that contract.

A No, sir. We could not.

Q Did you seek to get the international to get the local, the Mohawk local, to try to get their employer to try to stop making Lee tires?

A No, the international could not get involved with something like that.

THE COURT: The question is, did you try to get them?

THE WITNESS: No, sir.

Q Am I correct, Mr. Hess, and don't you know it, that the local out there made strenuous efforts to get Mohawk to stop making Lee tires?

A They probably did after they heard the story of what happened back in Conshohocken. I believe they did.

THE COURT: Was that your purpose in going there,

to tell the local so they would do that; that was his question.

A We went out to check to see what they were making and what they were doing and we explained to them just what our problem was back home.

THE COURT: The question is, was it to try to stop them from making or manufacturing?

THE WITNESS: We were hoping they would.

THE COURT: So say it, that is your purpose.

Q Were you successful?

A I don't believe we were, no.

Q As a matter of fact, the Rubber Workers' Magazine had an article, did it not, of your efforts to -- of the union's efforts -- to make Mohawk stop making Lee tires?

A I don't know.

Q I see. Mr. Hess, on or about October 4, were you informed that the National Labor Relations Board had declined to issue a complaint upon your charge of refusal to bargain?

A Yes.

Q I show you what has been marked Document 17-A and ask you if that is the notification that you received.

A Yes, sir.

MR. MOSS: I offer it in evidence as Exhibit 17-A.

THE COURT: You have the same objection?

MR. AUERBACH: Yes.

MR. MOSS: As I understand it --

THE COURT: You have no other objection except the standing objection?

MR. AUERBACH: That's right.

THE COURT: It is received subject to the standing objection.

(Defendant's Exhibit 17-A received in evidence.)

BY MR. MOSS:

Q Am I correct that one of the reasons given by the Regional Director for not issuing a complaint was the union's firm position against accepting a wage demand? Am I right?

A Where do you see that?

Q "Moreover, in view of the company's financial position and in the light of the union's firm position regarding wage demands and other" --

MR. AUERBACH: I object. The document speaks for itself.

THE COURT: I think the document does speak for itself.

MR. MOSS: I was going to ask that question as a basis for another question.

THE COURT: Just point it out to him and then go ahead with your question.

Q I point out to you the statement in this letter, "Moreover, in view of the company's financial position and in light of the union's firm position regarding wage demands and other contract items, there was insufficient basis for a finding that the position taken by the company during bargaining manifested bad faith."

Now, does that refresh your recollection that at least up to October 4, 1963, you had not acceded to all the company's negotiating demands?

A Yes, sir.

Q Mr. Hess, in your direct examination at page 182 and 183, your counsel on 182 asked you this question:

"Q Mr. Hess, at the time of the work stoppage, July 18, 1963, did the union offer to leave any of its personnel at the plant for any purpose?

"A Not at the time of the work stoppage, but after the work stoppage we had offered -- the company were taking outside contractors into the plant to help shut off the water supply and all sprinklers and we had offered and asked if our maintenance could go in and do this and they rejected that."

A Yes, sir.

* * * * *

(Defendant's Exhibit 40-A received in evidence.)

THE COURT: Bernstein is who?

MR. MOSS: He is one of the company representatives who was an attorney for the company here.

Tarbutton is one of the local union people and Garber is an international representative.

Q Isn't he, Mr. Hess?

A Yes.

THE COURT: Who was Tarbutton?

MR. MOSS: The secretary of Local 227.

Q Wasn't he?

A Yes, he was a member of the negotiating team and also a secretary. After our regular secretary got laid off, he became secretary.

THE COURT: So Bernstein and Heinrich are the two company people and everybody else is a union person?

MR. MOSS: Yes, sir. The names of the people are listed up on top of page 1, who represented whom.

THE COURT: I see.

Q Mr. Hess, after you received, on or about October 4, the notification from the NLRB Regional Office they were not going to issue a complaint, did the union appeal that to the General Counsel's Office in accordance with the NLRB's administrative procedures?

(Defendant's Exhibit 18-A received in evidence.)

BY MR. MOSS:

Q Mr. Hess, do you recall how long the negotiations as to the working agreement continued?

A I didn't get your question.

Q How long they continued, the negotiations for the working agreement.

A No, sir. I can't recall.

Q Looking at your own union minutes, you saw they went at least through some time into September, didn't you? The ones we just looked at.

A If a meeting was called by the union or a Federal mediator, I guess we had a meeting, yes.

Q Are you suggesting by that consistent answer that the company was not agreeable to meeting with you?

A Not necessarily. It is just we called the meetings. It was either the union who wanted to meet to see if we could come to some kind of a settlement or the Federal mediator who called the meeting.

Q I asked you whether it is your testimony that the company objected to meeting with you.

A No, they didn't object. Each time a meeting was called, they were there. Part of the committee, I guess, were there.

Q Practically each time after the strike, a Federal mediator was present, wasn't he?

A I believe so, yes.

Q He was the one at the end of each meeting who suggested when there would be another meeting, wasn't he?

A Yes, we had asked if the Federal mediator would call a meeting many times. We discussed this with the Federal mediator, to get meetings.

Q Did there come a time in January of 1964 when the Federal mediator suggested to both parties, the union and the company, that nobody seemed to be getting anywhere and that maybe you better state your positions once more, and then he would, if there were ~~not~~ no change, that he would suspend further negotiating sessions; do you remember that?

A I can't recall.

Q That would have been a significant event, wouldn't it?

A No. I believe the Federal mediator came up with some good proposals and they had refused and there was no further going on.

THE COURT: The thing is, do you remember the Federal mediator ever saying that?

THE WITNESS: No, I can't recall.

Q Am I not correct, Mr. Hess, that there was a

meeting on January 21, 1964, at which the Federal mediator made that statement, that he wanted to know what the present positions of the parties were and that the company stated its position that it needed a substantial wage cut and the other ~~belief~~ relief which it had offered?

A They probably did, yes.

Q And that you, you personally, at that meeting -- if I said January 21, I meant January 6 -- that you personally at that meeting said, "Our position is the same. However, the employees want to go back and would go back to work under the old agreement"?

Do you recall making that as your last offer in connection with the negotiations which the Federal mediator was holding as to the working agreement?

A I probably did, if it says it there.

Q And that Mr. Bernstein then said, "I would like to make it clear that the employees refuse to return to work under the new terms and conditions proposed to them by the company"?

A Yes.

Q And that you then said, "I would again like to say that we would be willing to return to work under the same agreement for a one-year period or for a two-year period with a one-year re-opening"; was that your offer at that

time?

A Yes, it probably was, you are reading it.

Q And that Mr. Bernstein then said, "Would you be willing to return to work under the terms and conditions set forth by the company on July 16," and you said again you would go back to work under the old agreement?

A Yes, sir.

Q Now, so that would refresh your recollection, I take it, that up to January 6, at least, 1964, you had not offered to accept all of the company's proposals?

A Yes, sir.

Q Now that we have discussed that meeting, does that refresh your recollection that on February 3, there was one final meeting in which the Federal mediator said or asked if you had changed your position, the company and union, and each one of you said no, and the Federal mediator said, "Then I'm going to adjourn any further negotiations until I hear from one or the other parties that there's some sense in having it"?

A I can't recall.

Q You don't recall that?

A You say, there are two meetings he made that statement? I can't recall.

Q In your testimony, on direct examination, you

testified that you made this offer to accept all of the company's proposals in June or July 1964.

A Yes, sir.

Q Then on cross-examination, you changed that and said that you believed that you had made that offer in December of 1963 or January of 1964; do you recall that?

A I can't recall when we made it. I know we made it at the meeting in Valley Forge Hotel up in Norristown. You seem to have all the minutes there. When were we up to Valley Forge?

Q How about at the Social Security Office in Norristown?

A What about the Social Security?

Q Didn't you meet sometimes at the Social Security Office in Norristown?

A Yes, sir, this is when we filed for unemployment compensation.

Q Did you have negotiating meetings at the Social Security Office?

A No, sir, we don't negotiate in the Social Security Office in Norristown.

Q You never negotiated there?

A Not that I can recall.

Q Did you negotiate anywhere in Norristown other

than at the Valley Forge Hotel?

A Not that I can recall. The Valley Forge Hotel is about the only one I can remember in Norristown.

Q Well, we have discussed the January 6 meeting at which your offer was that you would go back under the old agreement.

Isn't that indicative of the fact, doesn't that refresh your recollection, that at least up until then, you had not offered to accede to all the company's demands?

A January 1964?

Q 1964.

A Yes, sir.

Q You don't recall, I take it, that there was a time when the Federal mediator knocked off having any meetings with respect to the working agreement?

A There were so many things happening and we were trying to get so many meetings, I can't recall when and where, what was what.

Q You are suggesting that you don't recall that at some time that meetings on the working agreement were suspended because of what the Federal mediator said was an impasse?

A Probably did. That's true but I can't remember when.

THE COURT: Do you remember it happening?

THE WITNESS: Yes, I guess so.

Q You remember that it happened?

A I can't recall. I'm saying it but it probably did.

Q Between that time, between January 21, the January 21 meeting, at which your position was that you would go back under the old agreement, do you recall any further meetings until May 1 for negotiations with the company about either the working agreement or the welfare agreement?

A Probably the welfare agreement, I guess.

Q Well, you testified for your counsel and identified a document dated May 1, 1964, under which the company gave you notice that it wished to renegotiate the welfare agreement, am I correct?

A Yes, sir.

Q I'm asking you if you recall any meetings between January 6 or February 3, and the first meeting under the re-opening of the welfare agreement which dealt with negotiations as to either the working agreement or the welfare agreement.

A February 3? I can't recall. I believe we had meetings at the Valley Forge Hotel. I don't know what the

dates were, though.

Q What is your best recollection now about when this offer to accept all of the company's proposals took place?

A Probably right around a time in 1964.

Q What time in 1964?

A When we got notice to re-open on the welfare agreement.

Q When you testified on cross-examination the other day, you testified that you had offered to accept all the company's proposals before the welfare agreement was either re-opened or re-openable.

A Well, I said right around this time. I didn't know if we were -- we were not in negotiations with the welfare agreement at that time.

Q Was the Federal mediator present when you made this offer?

A No, sir.

Q He was not. Where did you make this offer?

A At the Valley Forge Hotel in Norristown, Pennsylvania.

Q In whose company?

A In whose company?

THE COURT: Who was there when you made the offer?

A For the company, you mean?

Q Who was there for everybody?

A For the union, we had our negotiating committee there, and for the company, they changed so many times, see if I can remember, I believe Heinrich was there, I believe a Mr. Schick, a Mr. Conway. I can't recall if there were any more there or not.

Q And this is supposed to be some time before May 1, 1964?

A In around that time. I can't say it was before or after, no.

Q What did you say? Are you the one that made thatoffer?

A Yes, sir.

Q What did you say?

A The committee came up and we decided that we would concede to all the company proposals to see what position they would take.

Q What did you say?

A We started, as far as we are concerned, we are conceding, we will give you anything you want in order to re-open the plant and get the people back to work.

Q What did the company say?

A The company said it is too late, the axe has

fallen; remarks similar to that.

Q That was a most significant --

A I believe that was made by Mr. Heinrich, Bernstein, either one.

Q That was a most significant meetings, wasn't it?

A Yes, sir.

Q You offered to give in to everything the company had been wanting for the last six or seven months?

A We had been making offers and then they would have to go back to their committee and they would come back and reject them.

Q This, you say, was a total surrender to the company's demands, right?

A Yes, sir.

Q Wasn't that something that you would have put down in writing?

A I believe we would have, yes.

Q But you haven't found anything?

A There's a lot of things I haven't found I wish I could.

Q You haven't found this?

A No.

Q And you say this was a meeting at which the Federal mediator was not present?

A I don't believe he was present, no. He might have been.

Q I thought he was present at every single meeting that took place after you invited him in at the time of the strike?

A I can't remember.

THE COURT: Is this a good place for a recess?

MR. MOSS: I guess so.

THE COURT: Five minutes or so.

(Recess)

BY MR. MOSS:

Q After you made this surrender to the company's entire demands and they refused to accept it, did you file another refusal to bargain ~~the~~ charge with the NLRB?

A No, sir.

Q That was the ultimate refusal to bargain, was it not?

A They just said it was too late at that time to accept it.

THE COURT: I think you have exhausted this topic. He doesn't remember when he did it or where he did it. He remembers doing it and he ~~says~~ said the Federal mediator wasn't there.

MR. MOSS: Your Honor, I'm not sure it is

necessary to leave it at Mr. Hess' word.

It certainly is a very serious charge that he makes, that he gave in entirely and the company refused to re-open the plant.

THE COURT: It seems we have established that he has no recollection except a recollection that it happened and that no Federal mediator was there.

Now, I don't see what further you are going to get by cross-examining him.

The fact that he didn't file a complaint, you can argue the significance of that but there's no point in cross-examining him about it.

I take it, your position is that this never happened?

MR. MOSS: Yes, sir. And certainly, if it did happen, they would have some minutes which would show that.

THE COURT: You made that point.

A It is in the deposition. Isn't there a date in the deposition or anything?

Q No. And you were asked to produce all the minutes of the negotiating sessions, were you not, on the deposition?

A Yes, what I could recover.

Q Mr. Hess, turning to a new subject, for a moment,

THE WITNESS: I did not, yes.

BY MR. MOSS:

Q Did you file any grievance about the company's failure to pay you, the layoff people, that severance award?

A We tried to file grievances but the company stated they would not accept them. They had no working agreement in effect.

Q Did you file any grievance, can you produce any grievance you filed about the laid off employees and this severance award filed around this time?

A The company stated they would accept no grievances from us due to the fact that our working agreement has expired.

Q Did you file some grievances in December of 1964? I'm talking about grievances filed now --

THE COURT: The purpose of this is to establish this was an afterthought?

MR. MOSS: Yes, sir.

THE COURT: Isn't that rather conclusively established, that the first complaint didn't mention it? The first complaint in this action didn't mention this period. I picked that up somewhere.

MR. MOSS: That's right.

THE COURT: Why worry the point? Obviously it is

only an afterthought. That doesn't necessarily mean it is not true, but the fact that it is an afterthought seems to me obvious.

MR. MOSS: It seems to me to be important to establish here that although this witness is testifying that this demand at this time was for a special distribution and, therefore, supports their position that it was their opinion that it had permanently ceased operation at that time, it is important to prove that is not what this demand was about at all.

THE COURT: I suppose that is correct.

MR. MOSS: I'm just wanting to pin this man down on the fact that at this time they didn't file any grievances about this saying that they were entitled at this time to a special distribution.

THE COURT: I think you have established that.

MR. MOSS: I'm really not sure I have. If the witness agrees I have established that, that would suit me fine.

THE COURT: It is more important that I agree.

MR. MOSS: I agree with that.

THE WITNESS: We discussed the grievance with the company and they refused to handle it due to the fact that the working agreement has terminated.

THE COURT: The Court will take judicial notice that all people always think that the idea they now have they had at the beginning.

This witness, in my judgment, is in error on that view as to this issue.

BY MR. MOSS:

Q Mr. Hess, I want to leave in front of you a copy of the Conshohocken welfare agreement, which has been marked in evidence as Exhibit 36, and I just want to leave it there with you if you will hold on to it for a minute because I want to ask you some questions about it.

Exhibit 45 in evidence,which is a letter of May 1, 1964, is the document that you spok e of previously, which the company gave you notice that it wished to re-open and renegotiate the welfare agreement in accordance with the welfare agreement terms; am I right?

A Yes, sir.

Q How long had a welfare agreement been in effect between the company and the union?

A The last one? Since 1961.

Q Well, there had been a welfare agreement which contained the fringe benefits since, am I right, somewhere around 1950?

A Yes, sir.

Q And am I also correct that up until 1961, that welfare agreement terminated at the same time as the working agreement terminated?

A Yes, sir.

Q And that in 1961, there was a sort of general consolidation of the welfare agreements which had been a pension plan and an insurance plan, insurance benefits plan, and a service award and special distribution plan?

A Yes.

Q Am I correct that it was in 1961 for the first time that the union negotiated with the company the provision that the welfare agreement would stay effective for five years and the working agreement would be only effective for two years?

A The first time we negotiated this?

Q Up until that time, the welfare agreement had always expired at the same time as the working agreement, had it not?

A I can't answer that. I thought they were five-year agreements.

Q You don't know?

A I can't -- no.

Q Who negotiated into the contract the fact that the welfare agreement was going to last for five years and

be re-openable once in that period after May 1, 1964?

A The local union with help from the international representatives.

Q Am I correct that your testimony here has been that every time the working agreement came up for renegotiation you, with the big four -- that the main negotiations were about wages and fringe benefits?

A Yes, sir.

Q And that when your working agreement thereafter came up, you sought and generally accomplished the same wage increase, an increase in fringe benefits which the big four had acquired, is that right?

A Yes.

Q Does that refresh your recollection as to whether it was the union's request or the company's request that this five-year agreement be re-openable some time in the source of the agreement?

A Yes, sir. This was at the union's request.

Q And am I also correct that you negotiated at that time that if the negotiations were not successful within sixty days that you would have an opportunity to denounce the agreement, to terminate the welfare agreement?

A Yes, sir.

Q Am I also correct that you also at that time

negotiated a provision that if the welfare agreement terminated in accordance with those terms that you all could terminate the working agreement at the same time?

A Yes, sir.

Q Even though the working agreements might still have some period to run?

A Yes, sir.

Q And you also negotiated into the welfare agreement that if thereafter there was agreement upon a new welfare agreement, that then the old working agreement would automatically come back into effect; am I right?

A Yes, sir.

THE COURT: I didn't get the last question.

Off the record.

(Discussion off the record.)

BY MR. MOSS:

Q Mr. Hess, do you recall when the first negotiation session under the welfare agreement took place?

A No. I know we received notice in May.

Q Let me show you what has been marked Exhibit 46 and ask you if that refreshes your recollection as to when the first negotiation was held.

A What was your question?

Q When the first meeting was scheduled under the

THE COURT: Company minutes?

MR. MOSS: Union minutes.

MR. TAYLOR: Previously marked as what?

MR. MOSS: They were marked as ZZ, I guess.

MR. TAYLOR: Are they in the pretrial order?

MR. MOSS: No.

THE COURT: Do you recognize the handwriting by any chance, Mr. Hess?

A What was your question?

Q I asked you if looking at those minutes, you recognize them as copies of minutes kept, union minutes, kept of the meeting of May 21.

A I have not seen these minutes.

THE COURT: Reading them, does it refresh your recollection as to what happened at that meeting?

THE WITNESS: No.

Q Look at the bottom of it. The very last thing on that minute. Does it report a statement by you?

A Yes, sir.

Q Which says what?

A "If the company will go along with the present CBA for two years, we will accept your proposals on the pension agreement."

Q Does that refresh your recollection that you

made that offer to the company on May 21, 1964 sessions?

A I can't recall but I will say yes, I probably did.

THE COURT: Those are in handwriting, aren't they?

MR. MOSS: Yes.

THE COURT: Do you recognize the handwriting?

THE WITNESS: It is, I believe, Mike Sabol. He was our field representative for the international at the time.

THE COURT: Does it look like his handwriting?

THE WITNESS: Yes.

MR. MOSS: Your Honor, I think that the plaintiffs' counsel will agree that these were identified at the pretrial of Mr. Sabol as being minutes kept in his handwriting which he produced and they have the others right there, do you not?

MR. TAYLOR: Yes, we do.

THE COURT: Then it is generally agreed it is Mr. Sabol's handwriting? Mr. Sabol apparently said so on deposition and the witness says so now.

MR. TAYLOR: Yes, I believe so, your Honor.

Q Is that a serious offer, Mr. Hess?

A Yes, sir.

Q That would indicate, would it not, also, that at

least by May 21, 1964, you had not offered a complete acceptance of all the company's proposals?

A No, sir.

Q It doesn't?

A We did concede prior to this time to accept the company's proposal. The statement was probably made there when we went into negotiations for the welfare agreement that at that time we had seen that we could not get the company to go along -- at the time we made the proposal so we stated we would be willing to go along -- we would give them all the proposals on the welfare agreement if they would go along with the CBA agreement.

Q So it is your testimony now that the company, having rejected your offer to go along on everything in the working agreement, that now you were offering to go along with everything they wanted on the welfare agreement but retreating from your prior offer that you would give them what they said they needed on the working agreement?

A That's right.

Q Do you recall how many meetings there were, negotiating meetings, under the welfare agreement?

A No. I believe a few. I don't know how many.

Q Am I correct that you negotiated, at least occasionally, between May 21 and September 1964?

A September when?

Q 1964.

A Yes, sir.

Q Am I correct that during the course of those negotiations, the union maintained firmly its position that it would not agree to any wage cut?

A I don't recall.

Q Am I also correct that it was your position and the union's position that you didn't want to negotiate anything about the welfare agreement, you wanted to negotiate only a new working agreement?

A I don't recall. I know we wanted to negotiate to try to get that plant back in operation.

Q Mr. Hess, this was an important matter for you and am I not correct that to your recollection, it was the union's position throughout the negotiations on the welfare agreement that they didn't want to renegotiate the welfare agreement, that they wanted to talk about getting settled on a new working agreement?

A Yes, sir. We wanted to get settled on a new working agreement.

Q I'm asking you whether you didn't take the position in the welfare agreement negotiations that you didn't want to talk about welfare agreement negotiations,

that you wanted to negotiate a new working agreement?

A No, sir. I didn't take any position. I wanted to talk about everything.

Q I'm talking about the union's position. Enunciated by you and Mr. Sabol, Mr. Vasko, if he was there, that you didn't want to negotiate the welfare agreement, you wanted to negotiate a working agreement?

A We wanted to negotiate. We wanted to talk. We wanted to get that plant back into operation.

THE COURT: I understand that but that's not inconsistent with what counsel is asking.

Did you tell the company representatives that your position was that the only way to get the plant back in operation was forget about the welfare agreement and get a working agreement set up; was that your position?

THE WITNESS: I probably suggested that, yes.

THE COURT: That's what he wants to know. Was that your position?

I don't know what relevance it has but that's what he wants to know.

Q Am I not correct that from time to time in those negotiations that you made it clear to -- or the union made it clear to the company management that they might have given this relief to the prior management but they were

not going to give it to the present management?

A I might have made that statement, yes.

Q Am I not also correct that throughout these negotiations which had been called by the company to renegotiate the welfare agreement that the union persistently took the position, kept to the position, that they would not accept any wage cut?

A No, I would not say that.

Q Did the company ever accept your offer to extend the working agreement for two years in return for your acceptance of all of their proposals for the welfare agreement?

A No, sir, not that I can recall.

Q As a matter of fact, they specifically turned it down, did they not?

A The company turned it down? I can't recall. As far as I know, yes.

MR. MOSS: Your Honor, would this be a convenient time to stop? I think I can reorganize myself better to go on with the afternoon and probably finish with Mr. Hess.

THE COURT: All right. I can't resume before two, but --

MR. MOSS: I think it probably would be profitable for everybody.

phone?

A I don't know if I said that or not. I talked about a nationwide boycott, yes.

Q And thereafter did you get involved with a nationwide boycott by the union of Lee tires?

A Did I get involved? Yes, sir.

THE COURT: Was there such a boycott?

Q There was such a boycott that you all initiated and made as effective as possible, was there not?

A Yes, sir.

Q Sometime later did you become --

THE COURT: What was themachinery for making it effective?

MR. MOSS: I guess Mr. Hess can answer that question better than I can.

THE COURT: You say there was a boycott. What does that mean?

THE WITNESS: That means we tried to get people not to buy Lee tires, and so forth. We explained to them what just happened at Lee tire --

THE COURT: Who are the people you tried to get not to buy them?

THE WITNESS: All union people, anybody we could get, generally everybody, not to purchase the tire.

Q Did there come a time, Mr. Hess, when you understood that Mohawk was no longer making Lee tires but that United States Rubber was?

A Yes.

Q Do you know when you first became aware of that?

A No, I don't know when I first became aware of it, but I know -- I believe they had an order. When they completed the order, they didn't renew it.

THE COURT: When Mohawk completed the order, Mohawk didn't renew?

THE WITNESS: That's right.

Q Your counsel offered in evidence Exhibit 16A, an agreement dated May 28, 1964 between Lee Tire Centers and United States Rubber Company, providing that the United States Rubber Company would make Lee Tires.

A Yes, sir.

Q Can I assume that shortly after United States Rubber Company began making Lee Tires you became aware of that fact?

A Yes, I became aware that U. S. made the tires.

Q I'd like to show you a document which was marked 26A and ask you if you recognize that as a copy of an article in the United Rubber Worker magazine with respect to United States Rubber Company making Lee Tires and the efforts of the union to prevent them from doing so or dissuade them from

doing so.

THE COURT: United Rubber Worker, I assume, is a union paper?

MR. MOSS: Yes, sir.

A Yes, sir.

MR. MOSS: I offer it in evidence.

THE COURT: Any objection?

MR. AUERBACH: No objection, your Honor.

THE COURT: Received as 26A.

xx (Defendant's Exhibit 26A received in evidence.)

Q Mr. Hess, the pretrial order indicates that the parties stipulated that the company and the union met in negotiating sessions on the company's proposals on May 21st, June 18th, June 24th, June 30th, July 7th, to revise the welfare agreement. Can you tell me whether at any of those meetings the union agreed to go along with all the company's proposals if the company would reopen the plant?

A In '64?

Q Yes.

A Yes, sir. I believe prior to meeting on the welfare agreement, I believe.

Q Prior to that?

A Yes.

Q I am talking about these particular meetings

which the parties have agreed were held to negotiate the welfare agreement. At any of those meetings did the union renew its offer to go along with everything that the company wanted on the working agreement?

A No, not after that one particular agreement where we decided, no.

Q I'm correct, am I not, that from then on, during these meetings which were for the purpose of renegotiating the welfare agreement, that the union's position was that it wanted the old working agreement?

A We needed a working agreement in order to negotiate a welfare agreement.

Q Your position was that you wanted the old working agreement?

A Yes, we wanted to work along with the old agreement, but we were willing to make changes. I believe if you go along in your meetings you will see, especially with the minutes that you have, that there were proposed changes.

Q Did you ever propose to go along with the wage cut the company wanted?

A No, sir. Not after that one meeting.

THE COURT: Do I understand that you had one meeting where --

THE WITNESS: We had the one meeting where we

conceded on everything.

THE COURT: And the company turned that down, and then you went on negotiating --

THE WITNESS: No. When we went in to meetings, we would discuss pretty near everything. They didn't bring up wages at every meeting we had.

THE COURT: At one meeting you said you will do everything they want you to do. They turned that down?

THE WITNESS: Yes.

THE COURT: What was the point of going to other meetings?

THE WITNESS: What was the point of going on? We wanted to continue --

THE COURT: If you had told them, "We will do everything you want us to do," and they said, "we won't put you back to work even though you say you will do everything we ask you to," what was the point of going on with negotiations?

THE WITNESS: The company wanted to.

THE COURT: What was the point of going to meetings? If you had told them what you told me, that you had said to them, "I will do everything you want," and they said, "No, we are not interested, the axe has fallen," then what is the purpose of going on talking?

THE WITNESS: So they could throw an unfair labor charge at us if we didn't go to the meeting.

THE COURT: You mean to say that you thought that you, having told them that you would give in to every demand they had made, and they said no, you thought it would be unfair labor practice if you did not keep on talking to them after that?

THE WITNESS: Right. Whenever there was a meeting called, we felt we should be there or we should call meetings--

THE COURT: Even though you had said that, "Whatever demand you make I will give in to it," you thought you still had to go to meetings when they had said, "We don't care what you say, we are not going to reopen the contract," you still had to go to meetings? Is that your thought?

THE WITNESS: Yes.

Q I believe you testified this morning that even after that you never filed a refusal-to-bargain charge with the NLRB, right?

A No, sir.

Q On July 8th, by Exhibit 48, the company notified the union, did it not, that it was its intention to exercise its rights to terminate the welfare agreement since the negotiations were getting nowhere?

A Yes, sir.

Q And that was in accordance with the terms of the

were going to report to the board the position of the parties, the state of the negotiations at that time?

A This was in November of '64?

Q Yes.

A They probably did, yes.

Q Do you recall that at that time a meeting was set for December 10th at which a report would be made about whatever happened at the board meeting?

A Probably did, yes.

Q Do you recall that there was one final meeting in December at which the company announced that Mr. ~~Neinrich~~ Heinrich, I believe, announced for the company that at the board meeting the company had determined to cease all operations because of the inability to reach agreement with the union and that you or the union announced that you were still on strike and that picketing at the plant was going to continue?

A In December of 1964?

Q Yes.

A Yes, sir.

Q What was the union's position at those last two meetings about the conditions under which it would go back to work at the Conshohocken plant?

A I can't recall what our position was. I know we

to go back, except for the time when you said some time you agreed to go back under everything?

A Yes.

Q In telling you about that, you understand that I do not accept that as being what happened, but your position is that one time in December or January, December 1963, January 1964, the union ~~offered~~ offered to accept all the company's then conditions?

A Yes, sir.

Q And the company said no?

A Yes, sir.

Q But other than that one time you never agreed to accept the July 16th working conditions or the wage cut?

A That is right.

Q I am correct, am I not, that on December 14th the company sent out a communication to each one of its striking employees and the former employees a notification that the company had decided to discontinue permanently all tire manufacturing operations at the plant and advising them that their employment was terminated; is that right?

A Yes.

Q Those notices have been already received in evidence as Exhibit 51 and Exhibit 50?

A Right.

Q Up to that time had you filed any charges with the National Labor Relations Board that the company had gone out of business without consulting the union on the terms and conditions of the cessation of business?

A No, sir.

Q And after that date, December 14th, did you ever file such a charge with the NLRB?

A No, sir.

THE COURT: April 22nd, you say?

MR. MOSS: The summons is dated or stamped April 22, 1966, by the Clerk's office here in the Southern District.

THE COURT: That is when the lawsuit was started?

MR. MOSS: Yes.

Q Mr. Hess, I just have a couple of other things I would like to cover with you.

After the company announced the permanent cessation of business in December and notified all of its employees of termination, what happened to the picketing and the strike?

A We at that time did not have that many pickets around but we did have pickets around the plant.

Q You kept on picketing the plant?

A Yes.

Q Did there come a time in 1966 when you became aware of the fact that Goodyear Tire & Rubber Company had taken an option on the plant, to lease it?

A Yes, sir, I was involved.

Q You were advised of that?

A Yes, sir.

Q Let me ask you something else.

Prior to the termination of the welfare agreement, am I correct that you made a demand or a request during the

MR. MOSS: No, I have not.

THE COURT: They have not been put in.

Q I draw your attention to a statement which is attributed to you, which I think you and I can figure out to say, "which reject your proposals and have a" --

MR. AUERBACH: What page is that?

MR. MOSS: Page 2.

Q -- "counter package proposal to present to you. 11B will accept 10 per cent. 15, which we previously identified as being the company's proposal to eliminate the welfare agreement, remain as is. Amend section 6, that a sale will be considered as discontinuance of operations."

Does that refresh your recollection that at least at some meeting you proposed to add to the welfare agreement a clause that would make it specific that a sale would constitute a permanent discontinuance of operation?

A I can't recall it. I think you'd have to go through the whole minutes to find out what we were talking about.

Q Goodyear began to get ready to operate the plant some time around July 7, 1965; am I correct?

A When they began to operate?

Q When they began to get ready to operate. When they signed a lease and began moving in.

A I believe they were moving in there in May of 1966, some time in May.

Q Am I correct that even when Goodyear began to move into the plant you all were still picketing?

A We had pickets around there, yes.

THE COURT: You said 1966 and you said 1965.

Q I am sorry. 1965.

A '65.

Q You still had pickets around the plant when Goodyear was moving in?

A Yes.

Q There came a time, did there not, when the international called the strike off?

A Yes, sir.

Q That was after Goodyear had begun moving into the plant?

A That was after Goodyear exercised an option, yes, sir. When they exercised their option.

Q Did Local 227 accept the international's view that the strike was over?

A Did the local accept? Yes, sir.

Q You challenged that action of the international, did you not?

A Did I challenge it?

Q The Local 227.

A Did Local 227?

Q Yes.

A Yes, sir.

Q Eventually you came to the place where the international union revoked the charter of Local 227?

A Yes, sir.

Q Over that issue?

A Maybe not over that issue, but they revoked the charter, yes.

Q There also came a time, did there not, when the international union sued Local 227 to get possession of the assets of Local 227?

A Yes, sir.

Q There also came a time, did there not, when you went back to work at the Goodyear plant?

A Yes, sir.

Q When was that, Mr. Hess?

A August 11th of 1965.

Q Did you go back to work at the Goodyear plant under a collective bargaining agreement?

A No, sir.

Q You went back to work without a collective bargaining agreement, did you not?

A Yes.

Q How many of the other employees, former employees, of Lee went back to work with you?

A I can't recall offhand. Quite a group.

Q Did there come a time later on when --

MR. MOSS: Strike that.

Q How long did you work for Goodyear without a collective bargaining agreement?

A I'd say to around -- I can't recall the first agreement. We organized the union in October of 1965.

Q You organized a new local?

A Yes, sir.

Q Which was to cover the employees who were working at the Conshohocken plant but for the Goodyear company?

A Yes, sir.

Q Eventually did you enter into a collective bargaining agreement with Goodyear?

A Yes, sir.

THE COURT: That new local had a different number?

THE WITNESS: Yes, Local 785.

Q And you became president of Local 785?

A Yes, sir.

Q And you still are president of Local 785?

A Yes, sir.

Q One final question.

Aside from the forms which you sent to the company, which all of you sent to the company, in December 1964, and the grievance that you sent to the company on January 8, 1965, you made no other claims for a special distribution or for arbitration of your claim until the first complaint was filed in this case in April 1966?

A I guess so, yes.

MR. MOSS: That is all.

THE COURT: Would you like a few minutes to organize yourself?

MR. TAYLOR: Your Honor, could we have a reasonable recess?

THE COURT: That is what I am asking.

MR. TAYLOR: We need some time, your Honor.

THE COURT: You need about ten minutes?

MR. TAYLOR: At least.

THE COURT: I would like to have you address yourself to this offer which seems very fuzzy as to what the witness' testimony is on the subject.

As I understand it, at some point he offered to accept all the company's demands and then that offer was rejected, and then they went on negotiating for some months after that. I wish you would try to straighten that out.

I must say it seems rather strange.

MR. AUERBACH: We will address ourselves to that.

THE COURT: Ten minutes.

MR. TAYLOR: 15, your Honor, if you will?

THE COURT: 15. I will be back at 25 past 3.

(Recess.)

REDIRECT EXAMINATION

BY MR. AUERBACH:

Q Mr. Hess, Mr. Moss asked you whether before you went out on strike or before the stoppage started whether you had offered to take any kind of pay cut.

You had previously testified on direct examination, I believe, that you had offered to take 5 percent of your pay in cash.

Do you recall that?

THE COURT: Five percent in what?

MR. AUERBACH: Five percent in stock. I'm sorry. I take that back.

Q Do you recall that, Mr. Hess?

A Yes.

MR. MOSS: Excuse me. What is the time of this?

Q When did you make that offer, Mr. Hess? When was it that you-- let me give you the sequence.

I think you testified that originally the company asked for a 25 percent wage decrease.

A Yes, sir.

Q This was before the contract ended, well before the contract ended, you testified this was in, I believe, September 1962.

Then later on, the company reduced its demand to

20 percent. Then I believe you testified before the work stoppage, before the contract terminated in June 1963, June 30, 1963, that one of the offers that you people made was to take 5 percent of your pay not in cash but in stock.

Do you recall that?

A Yes.

Q When was that?

A This was prior to the time that -- prior to July 16 when we went out on the street.

THE COURT: Is this reflected in any of the minutes?

MR. AUERBACH: I believe he testified to this on --

THE COURT: I remember the testimony. I just wonder whether it is reflected in any of the minutes.

MR. AUERBACH: Your Honor, it is in the Unemployment Compensation findings of fact, which hearing took place right after -- relatively shortly after --

THE COURT: But not in any of the minutes of the meetings?

MR. AUERBACH: I believe it is somewhere, your Honor. We will try to find that.

Q What was the company's response to that offer of 5 percent?

A I believe they said they would have to get back

with their executive committee and come back to us, and they turned us down.

Q They turned you down flat?

A Yes.

Q I want to think about it for a minute.

Was it that they turned you down -- did they say the 5 percent is not enough but if you make it 20 percent or anything like that, we might consider it, or did they just cut off discussion on the taking of part of your salary in stock?

A They just cut it off.

Q To the best of your knowledge, were you the lowest before the strike started, was your pay the lowest in the tire industry in the Conshohocken area?

A In the tire industry?

Q Yes.

A Yes. In our area.

Q In your working area?

A Yes.

THE COURT: You are talking about the union, not him personally?

MR. AUERBACH: No, no, the union. Any competitor.

Q You recall Mr. Moss asking you about what you

your Honor, in view of the fact that this subject was opened by Mr. Moss.

THE COURT: I don't think the subject was opened by Mr. Moss, exactly.

Anyway, proceed with your questioning.

BY MR. AUERBACH:

Q Mr. Hess, would you tell us what you did read about Mr. Clairmont?

MR. MOSS: Your Honor, I object to the question.

THE COURT: Overruled.

A There was a book out called "A Guide To Wall Street," and this book told all about Atlas Plywood and I believe two other companies at that time.

It stated what Clairmont does when he goes into a company, and apparently goes step-by-step, just what his moves are.

We read this book, and we seemed to know what Clairmont's next move is by following the book, and this was it.

Then the story came out in another magazine, and we read many articles on him from newspapers after that.

But we followed this "Guide to Wall Street" and we sort of knew what Clairmont's moves were.

Q What were these steps, in broad outline?

A Well, where he buys up the stock, goes into a company, buys up the stock, first thing he becomes the chairman, then president, he takes over and liquidates the company or sells it and goes on to another one.

Q Did you ever have any discussions at the meetings with Mr. Clairmont about this subject matter?

A Yes, we did.

Q Would you tell us when and where they were?

A Yes. It was prior to the work stoppage. We told Clairmont -- as a matter of fact, we had the book in at a meeting with us on the table, and we showed it to Maurice Clairmont and we asked him about it.

He didn't seem to want to discuss it. He said, "Well, you just check those plants today and you will find out those plants are operating."

That was about it. He never wanted to get into discussion --

THE COURT: He told you the book said that certain plants were unoperative and he said, "You check and you will find that isn't true, they are"?

THE WITNESS: Yes. What he did, he run the plants down until the plants became a white elephant and then somebody purchased it.

THE COURT: That's what the book said?

THE WITNESS: Yes.

THE COURT: You told that to Clairmont, and then what did you say?

THE WITNESS: No. We told Clairmont the steps he is going through and Maurice Clairmont told us, "Check back today and see if those plants are still operating and if they are making money," which they are. There is no doubt about it.

Q Was Mr. Clairmont operating them?

A Those plants?

Q Yes.

A No, sir. He was out.

Q Somebody else was operating them?

A Yes.

Q Mr. Moss asked you a number of questions about the super seniority for tire builders.

You, of course, recall your testimony that Mr. -- that the company asked you to give super seniority for tire builders.

First of all, how many or are there any jobs, were there any other jobs where in your opinion the skill or training, or whatever it was, required was at least as high as they were -- as it was for tire building?

A There are many jobs in the plant which took

the company apparently disagreed with you, your estimate, that they had enough.

THE WITNESS: No, they had sufficient tire builders in there.

THE COURT: Then why did they write this letter?

THE WITNESS: In case they would get some type of an order, I imagine, where production would increase, which they didn't have at this time.

THE COURT: They said they were going to increase production even though they didn't have the order.

THE WITNESS: No. As a matter of fact, production was decreasing all the time.

THE COURT: As I read this letter, it says they were going to increase production even though they didn't have any orders, if you would let them have super seniority.

THE WITNESS: No, sir.

THE COURT: Maybe you will wish to read it. Isn't that what it says?

MR. AUERBACH: In point of fact, your Honor, they were still laying off.

THE COURT: But the letter says they were going to change that practice and start taking on people if you grant them super seniority.

Maybe the letter was not sincere, but he says

he denied it so he never put it to the test, whether it was sincere or not.

MR. AUERBACH: Because after this letter, after May 1, they were still laying off.

THE COURT: But the letter says, "If you give me super seniority, I will stop laying off. I will, on the contrary, take more."

He says, "I won't give you super seniority."

How could we speculate as to what they would have done if they agreed to the contents of the letter?

BY MR. AUERBACH:

Q Did you have any conversations with Mr. Barkett on the contents of that letter?

A Yes, sir, we had discussed it.

Q After May 1? What did you tell him?

A We told him as far as the union was concerned, we gave him super seniority as far as tire builders are concerned,

As a matter of fact, we had a meeting, we called a meeting of the entire membership on a Sunday, and we had put this to a vote, and the vote came out by a few votes to agree with super seniority.

THE COURT: That's on future layoffs?

THE WITNESS: On future layoffs.

THE COURT: This letters concerns itself --

THE WITNESS: Asking for it on recall. At that time, we were laying off. As a matter of fact, we were getting close to negotiations.

When we gave them super seniority to begin with is when he laid, I believe, the largest group off at one time, if I am not mistaken.

BY MR. AUERBACH:

Q After you gave him --

A After we gave him the super seniority, agreed to that, then they come along and they laid the largest group off of any one time.

Then when this came about, we stated, "Well, we gave you super seniority for employees going out, but as far as rehiring, you rehire a man in accordance with his seniority."

THE COURT: The result of that was that he had wanted, as I understand it, correct me if I am wrong, if he had wanted to carry out the intentions of that letter and start rehiring people, he would have had to rehire in the tire building plant inexperienced people, as far as tire building is concerned?

THE WITNESS: Yes. He would have to hire the senior man first.

THE COURT: I gather from the tone of that letter that those senior men would be inexperienced in tire building?

THE WITNESS: That's right.

BY MR. AUERBACH:

Q What could you have done in that case? Suppose they hired back 300 people and he said to you, "We need some tire builders."

A If they hired anybody back and they would show us -- give us any indication that if they did hire people back and they needed tire builders, we would not have had a problem granting super seniority to bring them back.

THE COURT: Isn't that just what that letter asks him to say? Isn't that letter asking him to say exactly what he said to you right now?

MR. AUERBACH: What he is saying is that they did not regard this letter as in good faith, because right after the letter, plump --

THE COURT: That isn't what he said, as I understood his testimony.

He said previously he had given him super seniority and they continued layoffs.

Now, this letter says, "We want to reverse the process of laying off."

MR. AUERBACH: But he said that after they sent the letter, they still had a big layoff.

THE COURT: Is that what you said?

THE WITNESS: Yes.

MR. MOSS: The record will show that I don't believe that's what he said at all.

He said after they agreed to give them super seniority on layoffs, they continued to lay off.

He didn't say that after he got this letter, they continued to lay off.

THE COURT: As a matter of fact, Mr. Moss has stated my recollection of what he said.

BY MR. AUERBACH:

Q After this letter of May 1, 1963, were there continued layoffs?

A Yes, there were.

Q How big were they?

A They had pretty good size layoffs all the way through.

THE COURT: How soon after that letter?

THE WITNESS: They been laying off all the time. They never stopped until they got down to 261 employees.

Q Mr. Hess, you recall what the situation was in the month of June, around June 3, the end of May, after

this letter was received by you, after this letter of May 1.

What were the people who were still employed in the plant doing?

A Most of them were on clean-up details, working around, doing odd jobs. You were assigned this job today, maybe another job tomorrow. Production was low at that time.

Q This was after you had given them super seniority on tire builders, at least on layoff?

A Yes.

Q You had a lot of tire builders there?

A Yes.

Q What were the tire builders doing?

A They were assigned to cutting grass or cleaning up the departments or doing whatever clean-up that they could possibly do around the plant.

Q Even though they had super seniority as tire builders?

A Even though they had super seniority. There was never enough material there to keep all the tire builders working or building tires.

Q Did you bring this up to Mr. Barkett?

A Yes, we did.

Q What did you say to him and what did he say to

you?

A He told us at that time that right at the present time, it will be this way, but if something would happen, tomorrow we might get a big customer come in and give us a big order, our hands would be tied. But right at the present time, this is what they had to do.

Q Was this before or after they had taken the molds out?

A They were taking the molds out on June 7. By June 7, most of your molds and material was taken out of the plant.

Q When did they start taking the molds and material out?

A I'd say about the latter part of May, middle of May, latter part of May.

Q They were taking the molds out?

A They were taking the molds out.

Q Material?

A Material. They just kept enough stock on hand, m ore or less, to keep certain tire builders going.

Q When did you take your strike vote?

A I believe we took our strike vote some time in May.

Q What about their raw materials? When did they

get those out?

A They were taking the raw materials out at about the same time they were taking the rolls and presses out. They were storing them in two warehouses in Philadelphia.

Q Do you know whether they sold them or not?

A No, I couldn't say. I know there was advertisement in the paper for certain equipment that we had in the plant, but this was after the work stoppage.

Q When you had your people hauling grass and doing other things, what percentage of your people were actually working building tires? I don't mean just tire builders --

A Just tire builders?

Q No, manufacturing tires.

A What percentage of the whole plant?

Q Yes.

A Of the em ployees we had working at the time?

Q Yes. How many were working on the make-work jobs and how many were working on the --

A I'd say it was about fifty-fifty.

Q Getting back to the off-standard rate, Mr. Hess, was that a common industry practice?

A Yes. At that time.

Q When you took the strike vote on June 10, does

that mean you were going to strike?

A No, sir, it did not.

THE OCURT: I thought it was May you took the strike vote.

THE WITNESS: Latter part of May.

MR. AUERBACH: I think last time on cross-examination, he testified it was June 10. My notes were that he testified on cross that it was June 10.

Q My notes show thatyou said June 10. Do you recall, was that when you took the strike vote?

A I can't recall what date it was. I thought it was the latter part of May or the early part of June.

Q What is the purpose of taking a strike vote? Does that mean -- if it doesn't mean you are going to strike?

A No, sir, it does not. The strike vote that we had taken is more or less to give our local union executive board power to call a strike, if necessary.

THE COURT: It is a negotiating tool?

THE WITNESS: Yes.

Q Mr. Moss asked you about the agreement with Dunlop to take a reduction in pay.

Are you personally familiar with that?

A No, I am not.

Q Is somebody else in your union familiar with it?

A Yes, we have specialists from the international that have all of that information. We leave everything up to them as far as that's concerned.

THE COURT: I suppose you asked them about that? My recollection is in some letter to you, it referred to the fact that another company had taken lower pay, had been given lower pay. I don't think it mentioned Dunlop. Did you ask your expert from the international about that?

THE WITNESS: I am not familiar with that at all.

THE COURT: My recollection is that I saw that in a letter.

MR. AUERBACH: It was in the letter, Dunlop was mentioned, your Honor.

THE COURT: I thought Dunlop wasn't mentioned in the letter.

MR. TAYLOR: Not by name. Another tire manufacturer.

MR. AUERBACH: One of our other witnesses will testify to that.

I just wanted to tie in as a basis for -- your Honor, I would like to point out that in the pretrial order, page 10, paragraph 11, the statement which is, of

course, agreed to by both parties was that at the negotiations session on June 10, Local 222's president informed the company's negotiating committee that at a meeting the previous night, the union had voted to reject all of the company's -- all the company's proposals and to take a formal strike vote.

Several days later, the union's president informed Willard L. Heinrich that the union had authorized the strike at the discretion of Local 227's executive board.

THE COURT: That fixes the date?

MR. AUERBACH: That fixes the date.

BY MR. AUERBACH:

Q The date is therefore fixed of notification, Mr. Hess, by you to the company as June 10.

With your memory refreshed on that, was it before or after June 10 that the company began to take out the molds and the raw material?

A It was before.

Q How much before?

A I would say the latter part of May, beginning of June. I would say by June 7, they had most of the molds and the material out of the plant.

Q Had you given them any strike threat before they

started to take the molds out?

A No, sir.

Q Was most of the take-out of the molds and the equipment -- and the material accomplished by June 10?

A Yes, sir.

Q And by June 10, did you have people assigned to clean-up work like mowing?

A Yes.

Q You testified that you wouldn't take a wage cut or you didn't want to take a wage cut or wouldn't agree to a wage cut, but was there any discussion about whether you would accept any changes in productivity?

A Yes, we had a discussion on productivity, and the union would have gone along with it.

But after he seen that we were going to agree to go along with something like that, he brings back his other six-point program, that six-point program, where in order to go for productivity, we had to accept everything else that he had offered.

Q What kind of productivity changes did you tell the company that you were ready to take?

A Willing to take?

Q Yes, or willing to negotiate.

A We did agree to a job evaluation program and we

were taken and it may not be the most orderly.

THE COURT: That seems to me to be a rather important element of his testimony. And at the moment, it seems to be --

MR. AUERBACH: I will get to it. I will be very glad to get to it now, sir, so Mr. Moss doesn't think I have anything up my sleeve, even though it was towards the end of his testimony.

BY MR. AUERBACH:

Q Mr. Hess, you recall that you were asked on cross-examination -- you were also asked by the Court -- you said okay finally to the company, "We will go along with all the things that you asked for in the six-point program."

They said, "Too late," or according to you, they said, "It is too late, the axe has fallen," or whatever it is.

Do you recall that testimony?

A Yes. I stated that we would go along and work on their work conditions as they had asked us.

Q Then they said, "No dice," in effect, "It is too late."

Then you continued to meet?

A Yes.

Q Would you tell us what was your purpose in meeting?

A Our purpose in meeting, we felt that some time or other maybe we could get the company to come to an agreement or try to get that ~~payment~~ plant back in operation in some way, and we felt that some day maybe if we can't come to an agreement with the company, that the plant would be sold, and our jobs would be there.

THE COURT: What was the point of continuing to discuss when you, as I understood it, you told them, "We will give you everything you want," and they said, "No, we won't take anything"?

THE WITNESS: I would say, it seems to me that each and every time we discussed anything with the company or we would agree to agree with them in any way, they would have to go back to their executive committee and when they came back, it would be rejected or changed in such a manner that we just couldn't agree.

But when we did agree -- but each time they would come up with something different.

Q Did they come up with something different after that?

A Yes, they did. I believe one time, I think it was in the June 24 meeting that Mr. Moss was talking about

where we were negotiating -- the company told us at that time they needed proposals over and above what they had asked us on July 16 in order to get the plant operating again.

Q In point of fact, Mr. Hess, weren't you still meeting with the company on the pension and welfare agreement?

A Yes.

Q And your meetings with them, didn't you still have to meet with them on the pension and welfare agreement?

A Yes, but we thought it was fruitless, we felt we should have a working agreement before we get a welfare agreement.

Q I think you testified before that they had given you the re-opening letter dated May 1 on the pension and welfare agreement?

A Yes.

Q And that you were required to meet on the pension and welfare agreements?

A Yes, sir.

Q And that was during the course of one of those meetings which was for the purpose of discussing the pension and welfare re-opener that you came in or your committee made this offer?

A This was prior. This was prior to the re-opening of the pension and welfare agreement. We wanted to get this in before we went into negotiations on the pension and welfare agreement to see if we could come to some kind of settlement.

THE COURT: Do we have any understanding as to which meetings they had that there are no minutes for? Because apparently this happened at a meeting where there are no minutes.

I have seen things go along, there seem to be minutes for all the meetings.

MR. AUERBACH: No, there are not minutes for all the meetings, your Honor.

We have introduced minutes or we have shown minutes where we have them, but it is my understanding that there were some meetings that we don't have minutes for.

THE COURT: Was that agreed, the meetings that you don't have minutes for?

MR. MOSS: All we know is that the union has not come up with minutes for some of the meetings.

THE COURT: There are meetings that were had where the union ~~hasn't~~ hasn't come up with minutes for them.

MR. MOSS: Yes.

THE COURT: You don't agree they didn't have the

minutes, but you do agree there are meetings but no minutes have been supplied for them?

MR. MOSS: That's right.

MR. AUERBACH: I want to point this out to your Honor. There have been items where neither side has the documents that should be had, neither the company nor the union.

In some cases, they have a document that we didn't have, and your Honor saw that even on cross-examination there were documents given to Mr. Hess which after he looked at them, he recognized he had not received but he said, "I don't have them."

Obviously, he had no motive for hiding it or if he were hiding it, he would say, "I never saw it and never got it."

We have to remember that the locals in this international are officered by working union members, and particularly in this case, the local ceased to function and a new local came in later on with different records and different problems, and Mr. Hess, who was originally the president -- and if he doesn't mind my making this statement, there was a period of time when he was not the president.

THE COURT: Of the new local?

counsel in his own words for not being able to prove what he has to prove here.

The fact of the matter is that the minutes that have been here have never been minutes which Mr. Hess ever saw before. They were produced by the union on the depositions.

I object to all of this talk about what is common practice about leaving things or losing minutes or something like that.

You can argue that later on when you haven't proved your case.

THE COURT: He is arguing it now. Whether he proved the case is another question.

MR. MOSS: I think it is objectionable, your Honor.

MR. AUERBACH: I said it in response to your Honor's question.

THE COURT: There being no jury here, proceed.

BY MR. AUERBACH:

Q To get back to the meetings that were held after you made that offer, what was the subject matter of those meetings that you had with the company or the different subject matters that you had with the company?

A After that offer was made, we went on to the

welfare agreement.

Q Did you feel that you had to meet with them on welfare agreements?

A Yes, we had to. We felt that the company notified us that they were going to begin meetings and if we didn't meet, that we would be liable for an unfair labor charge.

Also, we felt that we wanted to meet, I wanted to meet as often as possible to see if we can come to some kind of a settlement. We had hopes --

THE COURT: That's what I am trying to get at. Why did you feel that way?

As I understand it, you said, "We will give you everything you want."

They said, "The axe has fallen, it is too late."

Did you tell the Federal mediators, "Look, call off this farce"?

THE WITNESS: No.

THE COURT: Did you ever tell the Federal mediator that you had made this --

THE WITNESS: Following the book that we had read, you find out that the steps that they followed, we were following -- we knew sooner or later that he would sell the plant, and we were hoping that a buyer would come

in, pick it up, and we would have our jobs back.

This is why we liked to continue negotiating, and so forth, to see what would happen.

THE COURT: You never told the Federal mediator that this was a lot of --

THE WITNESS: The Federal mediator --

THE COURT: Did you ever tell him about this offer that you made?

THE WITNESS: No. I don't believe we seen the Federal mediator at that time.

THE COURT: No, you have already said he wasn't at the meeting where you made the offer, but he was at subsequent meetings.

Did you ever tell him about having made the offer?

THE WITNESS: No.

MR. AUERBACH: I don't know there was any testimony that he was at the subsequent meeting.

THE WITNESS: There was none. We didn't have him in after that.

MR. AUERBACH: They did not have a mediator on the pension and welfare programs.

THE COURT: They did not?

MR. MOSS: They did have him at some of the

meetings and they did have the Federal mediator at the meeting of January 6, 1964 and February 3, 1964, which were dealing with the working agreement.

MR. AUERBACH: Yes, those were the last ones with the Federal mediator, but this offer was made after that. As a matter of fact, Mr. Moss, himself, brought out that it --

THE COURT: When was the offer made? It's never been made clear to me when this offer was made.

THE WITNESS: This offer was made prior to receiving the notice to open up for the welfare agreement.

THE COURT: Then there were Federal mediators present after that notice, weren't there?

THE WITNESS: When we went into negotiations with the welfare agreement, we negotiated without a Federal mediator, and at one meeting, we had made a request for a Federal mediator to come in, and the company stated that if we have no changes to make or anything, that the Federal mediators should not come in.

THE COURT: I am apparently in error, but my recollection of the minutes was that there were Federal mediators after that.

MR. MOSS: Your Honor, if I may express my recollection of the record, Mr. Hess testified the other

(Plaintiff's Exhibits 35A, 36A, 37A, 38A, 41A, 42A and 43A received in evidence.)

MR. AUERBACH: Your Honor, I would like to offer in evidence Exhibit 24A, which is a letter of May 20, 1964, by Lee National to the local and which Mr. Moss questioned Mr. Hess about yesterday. And attached to it was a summary of the company's proposals.

THE COURT: I assume you have no objection to that.

MR. MOSS: No, sir.

THE COURT: Received.

(Defendant's Exhibit 24A received in evidence.)

MR. AUERBACH: I have no further question of Mr. Hess, your Honor.

C H A R L E S [illegible] T O N H E S S, J R., resumed.

RECROSS EXAMINATION

BY MR. MOSS:

Q Mr. Hess, on your redirect examination you testified about an offer you made to take five per cent of the employees' wages in stock, correct?

A Correct.

Q That was supposed to be an offer which was going to give the company economic relief equialent to a wage cut?

A That's correct.

Q Where was the stock coming from?

A Where was the stock coming from?

Q Yes. Where was it to come from?

A Lee National Corporation.

Q And it was to come at the value of the five per cent of the person's salary, right?

A That's right.

Q And was the stock supposed to have any value?

A I guess it was. Clairmont was buying it.

Q What were the costs of this arrangement? Who was going to bear the cost of providing the stock?

A The Lee National.

Q Who was going to bear the cost of bookkeeping the arrangement?

A Lee National.

Q And wasn't it still going to be a cost to the company?

A Somebody's buying the stock. Clairmont was buying it. That was a cost.

Q I am talking about the stock which you were offering to take as part of your salary which you claim was part of a wage cut. The fact of the matter is that that still represented a labor cost to the company, didn't it?

A I don't know.

Q You do not know.

A I didn't buy any stock. We couldn't get it.

Q And you know nothing about the costs of -- mechanical costs -- of working any such arrangement, registration with the SEC, the cost of that?

A I know nothing about it.

Q Registration of issuing the stock?

A No, sir.

Q Registration of bookkeeping as to how much each employee got?

A What would be the difference if I bought it or Clairmont? It's still bookkeeping.

Q If it were bought by you, you would be paying for it.

THE COURT: You have established he did not know the implications of that to the company.

Q You testified yesterday --

THE COURT: In other words, what I said, you have admitted -- to make sure -- that you have no idea what the company would have had to have done to set that up?

THE WITNESS: No.

Q You testified yesterday that there were other jobs than tire building where skills were important and where the same situation on layoff and recall by seniority were involved; am I right?

Q Where is that in any of these minutes that your counsel has been introducing in evidence?

A It's in the same -- I imagine in the same with the tire builders.

Q You testified yesterday, did you not, that you didn't go along with super seniority in layoff and recall in those jobs?

THE COURT: My recollection is he testified he went along with layoff but not with recall.

THE WITNESS: Not with recall.

MR. MOSS: We will let the record stand.

Q There was quite a lot of talk yesterday about the letter that Mr. Barkett wrote you. Isn't it true that in that letter Mr. Barkett told you, told the union, that in the company's view the company was overstaffed in various departments for the number of tire builders they then had working, and that they were going to have to lay off some more people unless you would allow them to recall some tire builders out of seniority; isn't that right?

A Yes.

Q And he said that if you allow them to rehire or recall some tire builders out of seniority, they would be able to recall other people in other departments so that they could build up to a total of, I believe he said, 3,000

tires a day; isn't that what he said?

A This is what he said, yes.

Q Despite the fact that he told you that if he couldn't recall some tire builders out of seniority they have to lay off some more people but that if they could recall some tire builders out of seniority they would recall some other people on layoff, you refused?

A May I see that letter again, please?

Q Yes. I show you a letter, Exhibit 91A, dated May 1, 1963, from you to Mr. Barkett.

THE COURT: Incidentally, while the witness is reading the letter, I just want to explain for the benefit of counsel what might appear to be inconsistent rulings with respect to these Fortune articles ~~from~~ and books.

I excluded the articles ~~from~~ and books but I let the witness testify as to what he remembered were contained in them. I was not admitting nor do I consider it as evidence of the truth of what the article says, but merely indicating what the witness was thinking about it at the time which may or may not be relevant.

Have you got an extra copy of that?

MR. MOSS: Yes, your Honor.

Q I am right, aren't I?

A What was your question again?

THE COURT: Why don't you read the question back to be sure we get the same question again.

(Question read.)

A Yes, sir.

Q So that it was not too surprising, was it, after you refused that there were additional layoffs?

A No, sir. They've been ~~laid~~ laying off all the time with or without.

Q Yesterday, also, your counsel asked you whether or not there had not been some 825 employees actively employed in October or September, when Mr. Clairmont became chairman of the board, and whether there were not layoffs down to about 261 by the time of the strike; right?

A Yes, sir.

Q Do you know whether or not there were orders or work available in the plant for more than the number of people who were employed at the plant between October 1962 and July of 1963?

A Well, in July 1963, I feel that the work was there, yes.

Q And you were not building any tires then?

A No, they were shipping the ~~molds~~ molds out and the stock out. They had most of our molds out of there by June 7th. All raw material was being shipped out. They were all going

to warehouses in Philadelphia.

Q So you believed that Mr. Barkett was lying when he said that if they could get some new tire builders they could raise their production from the 2,400 that they were making a day on May 1st when he wrote the letter to 3,000?

A Yes, sir, I think he was lying.

Q Okay. You went back to Conshohocken plant for Goodyear in August of 1965?

A Yes, sir.

Q They began to produce tires around that time?

A Yes, sir.

Q How many people were working in the plant six months after you went back to Goodyear?

A Six months after I went back?

Q Yes.

A About -- I can give a guess -- I'd say about 400; four to five hundred.

MR. AUERBACH: Your Honor, I do not think on re-direct we questioned Mr. Hess about that.

THE COURT: What is the relevance of that? In the first place, there must be records of this that would be better than the witness' recollection.

MR. MOSS: I do not know that we have any records of what went on at Goodyear. My point is that I would

what you do about it.

MR. MOSS: Oh, I think he probably remembers, your Honor. He was the head of the union at the time; he was the president of the local union. It was six months after he began to work there that they first had a union contract. They had just formed a new local of which he had been the ~~charterer~~ chartering in force.

THE COURT: What is your best recollection of how many people were there six months?

THE WITNESS: I'd say between four to five hundred. In August, when I went back, I was the 155th person hired back.

THE COURT: 155th?

THE WITNESS: That was in August, yes.

THE COURT: I do not know if this is a proper question; either side may object. But what were the wage rates when you went back?

THE WITNESS: The wage rates, they were comparably good. When they first reopened the plant they had a clean-up rate. This came about in May of 1965 until they got their industrial engineers in to reevaluate each job, and their rates were comparatively good.

THE COURT: They reevaluated all the jobs and had different jobs than you had before?

THE WITNESS: Yes.

Q Mr. Hess, you testified on redirect examination and also just now that all the tire builders and everybody else were on clean-up jobs and you testified yesterday that people were out mowing the lawns and so forth?

A Yes.

Q How many people were out mowing the lawns?

MR. AUERBACH: I do not believe he stated it properly when he said they were all out on clean-up jobs.

THE COURT: My impression was most of them.

MR. AUERBACH: He said about 50 per cent in answer to the question I asked him.

MR. MOSS: Just now he said they all were on clean-up.

MR. AUERBACH: He was talking about an answer to your Honor's question about the situation when Goodyear reopened the plant.

THE WITNESS: Yes.

MR. MOSS: No, no, no, no, no. When he was talking to me and I asked him about the super seniority or whether they were building 2,400 tires, he said, no, they were not, that all of them were on clean-up jobs.

Q Now, how many people were doing clean-up jobs --

A Let me get it straight. You say I said all tire builders were on clean-up? I did not say that.

Q Let's get it straight. You said in May and June they shipped all the molds out --

A Not all the molds. I said the majority of the molds. They kept enough in there to work on a day-to-day basis. They kept enough material in there to work on a day-to-day basis.

Q Producing how many tires?

A I do not know how many tires. There weren't too many tires because they weren't building.

Q Mr. Barkett said there were 2,400 a day. How many do you say were being built a day?

A A Lot less than 2,400 a day.

Q There are 261 people in the plant, right?

A Right, yes, sir.

Q That you took out on strike on July 16th?

A Yes, sir.

Q And 131 of those were doing clean-up jobs?

A I would say yes, painting, mowing grass, doing everything. As a matter of fact, they had -- would give you a broom just to sweep to keep you busy.

Q What were you doing?

A What was I doing? I was president of the local. I wasn't in the plant at the time. I had just -- enough to do around with all the jobs I got from them.

Q So you were being paid by the company but you were not even working?

A I was being paid by the union.

Q You were not being paid by the company during this time before the strike? You weren't being paid by the company this time before the strike?

A I would be paid so many hours per union and so many -- by the company per union time, union hours, and so much by the local union.

Q How many people were out mowing the lawn?

A It varies from day to day.

Q How much lawn is there?

A At that time we had a lot of lawn.

Q How many lawn mowers did you have?

A I don't know. I didn't take inventory, I don't know how many they had.

Q So that all this talk about everybody being out mowing the lawn was just hyperbole, right?

A No.

Q How many people were out mowing the lawn?

A I don't know how many people were out mowing the lawn. I told you it was about 50 per cent of the people not working in the plant. They had been doing everything but their regular job. They were mowing grass, they were painting, they were seeping, they were washing windows; they were doing all this.

Q If they hadn't been doing that, what would they have been doing? They would have been on layoff, wouldn't they?

A No, sir.

Q Why not? You said they weren't building tires.

A They knew they were going to shut the plant down.

Q Why didn't they lay them off?

MR. AUERBACH: Your Honor, he is just arguing with the witness.

THE COURT: I don't know. Maybe the witness has an idea why they weren't laid off.

THE WITNESS: They knew they were going to shut the plant down. It was only a matter of time.

THE COURT: This is for argument of counsel.

A Because they knew we were trying to come to an agreement and get the people back to work, and each time we would come up and agree to something now they needed more, now they needed more; they didn't want to come to an agreement.

Q Of course their condition was getting steadily worse, was it not?

A Only as bad as they were making it.

Q Let's see if you can finally set a time on when this offer of yours was made. On your direct examination you said it was June or July 1964. On your cross examination you said it was December 1963 or January 1964. On your cross examination you finally said later on that it was before the welfare agreement was reopened or reopenable.

You have said that it took place at the ValleyForge Hotel. Can you give me any definite date now when it took place?

A Yes, sir, it took place there at the Valley Forge Hotel in Norristown, and as to a definite date I cannot give you, but it was either prior to or when we first negotiated the welfare agreement. It was right in about that time, because we gave in to everything to see what the company would do more or less so the pensioneers wouldn't get their pensions cut off, or anything like that. It was right around

that time.

THE COURT: Was it before or after the welfare agreement? Yesterday, you said it was before.

THE WITNESS: I am confused.

THE COURT: It seems to me on something so vivid in your memory you would have some recollection.

THE WITNESS: Either the welfare agreement was coming up, or we were going to discuss it and we wanted to do something about it.

Q You are still certain that it took place at the Valley Forge Hotel?

A I am positive it took place there.

Q Did you ever have any negotiations with respect to the collective bargaining agreement, the working agreement, at the Valley Forge Hotel?

A I don't think so.

Q Would it refresh your recollection if I told you that your own minutes, the minutes of Mr. Sabol which cover every meeting of the welfare agreement, show only two meetings at the Valley Forge Hotel -- three meetings, rather -- one June 18, 1964, one June 30, 1964, and one July 14, 1964, at which the federal mediator was present?

THE COURT: Was the federal mediator present only at the last or all three?

MR. MOSS: Just at the last.

THE WITNESS: Three meetings?

Q At the Valley Forge Hotel.

A You are probably right.

Q Mr. Hess, these are handwritten minutes of Mr. Sabol of the meetingw with respect to the renegotiation of the welfare agreement, and they show at the top of each page, where the meeting was held. I draw your attention to the ones for May 21, 1964. Do you see from there where that meeting was held?

A Federal mediator's office.

Q The next minutes are June 18, 1964. That was held where?

A Valley Forge Hotel.

Q And the next minutes are the minutes of June 24, 1964. Where was it held?

A The Sheraton Hotel.

Q That was in Philadelphia?

A Right.

Q I show you the minutes of June 30, 1964. Where was it held?

A Valley Forge Hotel.

Q I show you the minutes of July 7th. That was held where?

A Sheraton Hotel.

THE COURT: This is 1964?

MR. MOSS: Yes, sir.

Q July 21, 1964?

A Is that federal mediator's office?

Q It says "mediator's office"; right?

A Yes.

Q July 28, 1964?

A Mediator's office.

Q August 4, 1964?

A Mediator's office.

Q August18, 1964?

A Mediator's.

Q September 1, 1964?

A Mediator's.

Q And November 25, 1964?

A Mediator's.

Q And then this minute shows at the bottom, does it not, a note about the last meeting which was December 10th. That doesn't show where it was held; is that right?

A It doesn't.

THE COURT: 12-10 doesn't show where it was?

MR. MOSS: No, but I believe it was in the federal mediator's office. The last ones were all held there.

MR. AUERBACH: This points up what I was talking about before, that there is an omission there of an item which might be important, but --

THE COURT: For the present purposes we are establishing that only two meetings were held at the Valley Forge Hotel, I gather where the federal mediator wasn't present.

MR. MOSS: Three.

MR. AUERBACH: I think it also establishes something else, the incompleteness of minutes.

THE COURT: Let's establish what we are ~~tyring~~ trying to establish one at a time. Mr. Moss is trying to fix a date, or limit the time when this offer could have been made. According to the ~~minutes,~~ minutes. you read from the present trial, and according to the testimony, one thing he is sure about is it was the Valley Forge Hotel, and yesterday he was sure there wasn't any federal mediator present. And, Mr. Moss, he said that quite categorically, there was no mediator present.

MR. TAYLOR: At certain meetings.

THE COURT: At the meeting where the offer was made.

MR. TAYLOR: Yes, sir.

MR. AUERBACH: The only thing I want to point out to your Honor is this is ten years later.

THE COURT: I understand, but we are trying to

figure out the date. Mr. Moss says there were no meetings prior to the welfare negotiations at the Valley Forge Hotel. Is that correct?

MR. MOSS: I didn't say so, sir. Mr. Hess agreed that there were none. He said, no, he didn't remember any. I can tell you that there were none, but Mr. Hess testified he didn't remember any meetings at the Valley Forge Hotel on the working agreement.

THE COURT: I am asking counsel whether they had any contrary information.

MR. TAYLOR: There may have been meetings, your Honor. I was raising only about the presence of a federal mediator. The last recorded instance of a mediator present was at approximately the February 3, 1964 meeting on the collective bargaining agreement. The next presence is during the negotiations for the welfare agreement, July 21, 1964.

THE COURT: I understand.

MR. TAYLOR: On that there has never been a dispute, your Honor.

Q Mr. Hess, in going through these I missed one of these sets of minutes. I show you the minutes for July 14th. Where was that meeting?

A Valley Forge Hotel.

Q In Norristown?

A Right.

THE COURT: Was there a federal mediator present at that one?

MR. MOSS: Yes, sir.

THE COURT: Then that concludes that. He said the federal mediator was not present when he made this offer.

MR. AUERBACH: Your HOnor, I think there is one thing we can say on this. You have meetings at which the federal mediator is present, but he is not present all the time. The parties can meet and the federal mediator can come later. It is not like a court.

THE COURT: Then we will include that as a possibility, the meeting of June 24th.

MR. MOSS: It is July 14th.

The three meetings held at the Valley Forge Hotel were June 18, 1964, at which time the minutes do not show a federal mediator present; June 30, 1964, at which time the minutes do not show a federal mediator present; and July 14, 1964, which shows at the top of the page Mediator Duessing.

Q I ask you to look through the minutes and tell me if you find anything in there which refers to an offer to accept all of the company's proposals.

THE COURT: I take it he doesn't need to look through the minutes. I take it it is stipulated there is

nothing there about it.

MR. AUERBACH: That's correct, your Honor.

Q Your counsel stipulated, so you don't have to read them.

A I was interested in them anyway.

Q Yesterday in your redirect examination, Mr. Hess, you also testified that the purpose of your picketing at the Conshohocken plant was not only to advise people of the fact that you were on strike but also to keep people out of the plant?

A Yes. Keep strike breakers out.

Q Did the company from time to time in these negotiations ask you or discuss with you the possibility of bringing people in to do your jobs?

A During negotiations?

Q Yes.

THE COURT: You mean after the strike started?

MR. MOSS: After the strike began.

A After the strike?

Q Yes.

THE COURT: During the strike?

MR. MOSS: Yes.

A Yes, sir, you can say they did.

Q What was your response to that proposal?

A No, sir; we wouldn't agree to it.

Q And weren't you a little bit stronger than that? Didn't you say that you would make every effor,t ,legal or illegal, to keep anybody out of there that was going to do your job?

A I don't know if I said it or not, but if I didn't say it I will say it now -- I would try to keep everybody out.

Q In the course of your testimony here you have been talking about the fact that you kept on negotiating after the company purportedly turned down your offer to give in on everything because you thought there was going to be a sale, you thought there might be a sale, that you kept talking. You also testified that you tdd the company that you might have given these concessions or this relief to the old management but you wouldn't give it to the new management. Isn't it a fact that you and your executive committee from the time that the strike began were determined to force a liquidation and sale of the company so as to get it away from Mr. Clairmont?

A We had people in that plant with better than fifty and sixty years, and we weren't trying to force anybody to liquidate. We were trying to get that plant in operation. The whole Conshohocken area depended on that plant, and we weren't about to shut it down. He was. They were. Not us.

"~~Okay~~ Okay, I'll take it," and see what they would do.

Why didn't you do that?

THE WITNESS: We gave them superseniority. As soon as we did we had a big layoff. We knew they weren't going to bring them back.

THE COURT: All you had to do was make them prove it by saying, "Okay, you have your superseniority, let's see what you are going to do with it."

THE WITNESS: At that time we had so many members of our local union mad at us because we did agree to super-seniority after a vote -- we took a vote at the union hall, and the vote was so close, then we had members arguing with each other. They were against it, and if we would turn around and give it to them again after what they had done we would have had a problem.

THE COURT: Thank you.

(Witness excused.)

MR. AUERBACH: Mr. Vasko.

G E O R G E B. V A S K O, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. AUERBACH:

Q Mr. Vasko, are you connected with the plaintiff?

A I am general counsel of the United Rubber Workers

International Union. I have been general counsel for the past five and a half years. Prior to that time I was the assisant general counsel for five years.

I started my employment with the International Union on May 20, 1962. Prior to that time I had been a member of the URW for a period of twelve further years. I started working in the Oakes plant of the B. F. Goodrich Company on June 7, 1950. I was an officer of that local union, and I was also a chief steward in that local union. So I have been a member of the URW for a period now of 23 years.

THE COURT: What was your exact status at the time these things were going on?

THE WITNESS: I was assistant general counsel of the URW, your Honor.

Q Mr. Vasko, in the course of your duties both as general counsel presently, and prior to that as assistant general counsel, and prior to that as an official of a local, did you take part in various negotiations?

A I take part in all master contract negotiations in the Big Four, and it so happened that I was also involved in these current negotiations that we are talking about.

THE COURT: I take it you are a member of the Bar?

THE WITNESS: Yes, your Honor.

THE COURT: In what jurisdiction?

Q What took place at that meeting?

A We were led to understand that it was a meeting to intrdduce Mr. Clairmont who had just recently become chairman of the board of Lee National. He first came in, said he wanted to explain the situation, and that he did not want to hegotiate. Before we knew what was ~~ahppening~~ happening --

THE COURT: This is October 1962?

THE WITNESS: October 31, 1962, your Honor.

A Before we knew what was happening, he started telling us he was having problems in sales, and then he got into problems with the pension plan. We had had several problems over the pension plan. Prior to this time the company had never dunded the pension plan, it was a pay as you go plan, and at the time I think there was an actuarial liability on the part of the company in an approximate amount of six hundred thousand dollars, and the company did not fund that plan.

It was mentioned at that meeting that the company was looking for some relief, they were looking for relief in the area of superseniority, in the area of subcontracting, in the area of several other working provisions, and then also in the area of pensions, because it was mentioned that this was a tremendous burden to the employer in the event that the employer had to sell ow was going to sell to a new

buyer.

Of course, if that was the case you have a substantial amount of money that is due and owing because of the past service liability. Now, in this situation we would have been talking about funding a plan in an approximate amount of $130,000 a year for a period of thirty years to cover past service liability, and this is the point that Mr. Clairmont was bringing up.

Now, it was ~~monitioned~~ mentioned to Mr. Clairmont by the INternational President Burdon that the International union was not there to negotiate because the agreement was not terminated and still had about seven or eight months of existence.

Q Did Mr. Clairmont say anything else? Did he talk about liquidation?

A It seems Mr. Clairmont talked about liquidation quite a bit. When he talked about --

MR. MOSS: I object to this unless it is specifically related to this meeting.

THE COURT: I assume you are talking about this meeting. Your attention was directed to this meeting of October 31st.

A At this meeting, your Honor, he tried to impress upon those present from the International the fact that he was

a very successful businessman and had worked in several different companies. He had mentioned, I think, Reliance Manufacturing, Russell, Atlas Plywood. Also, that he had never had a strike. He had mentioned that point.

THE COURT: Just confine yourself to this meeting, unless your counsel wants to take you somewhere else subsequently.

Q At this meeting, did he say anything in regard to liquidation? Did he use the word at this meeting?

A Offhand, I can't remember whether it was this meeting.

Q When was the next meeting that you attended, Mr. Vasko?

A The next meeting was a meeting in Akron, Ohio, on April 16, 1963.

Q Where did this take place?

A If I am not mistaken, I believe it took place at the Akron Tower Motor Inn in Akron, Ohio.

Q Can you tell us who was present?

A Mr. Clairmont, Mr. Conway, I think also Mr. Garthwaite ~~Cartwaite~~; on behalf of the International union, President Burdon, Vice President Bommarito, Kenneth Oldham, the pension ~~pension~~ director, G. L. Patterson, Mr. Repaal, assistant to the International president, Roy Ockert, our research director,

A That was the prior meeting I was talking about.

THE COURT: I thought that was October 31st.

THE WITNESS: That's right, it was.

Q Would you tell us now what happened at the April 16th meeting.

A At the April 16th meeting we brought in our research director. We were proposing to the employer that he institute a Rucker plan, and a Rucker plan was a productivity sharing plan. This is one of the reasons we had Mr. Barbu in there from Strong-~~Narovich~~ Narovec.

When we made this proposition, Mr. Clairmont indicated that productivity wasn't his problem. He had mentioned that sales were his problem. He mentioned that their primary customer at this time had just terminated his business with them. This was Phillips. He said about five or six years ago Phillips had advised them that they were going to go into their private brand tires and that they were going to discontinue doing business with Lee, and about that time in April of 1963 that contract would have been terminated.

He also mentioned that they had about 45 sales outlets and that they were losing money, and I believe he mentioned they were losing money to the extent of about $700,000 a year.

THE COURT: Mr. ~~Barber~~ Barbu said that?

THE WITNESS: Yes, your Honor.

BY MR. AUERBACH:

Q What did Mr. Clairmont or any of the company people say with regard to that?

A For some reason or other, it seemed that Mr. Clairmont was avoiding the question of a productivity sharing plan.

As soon as someone would start talking about a productivity sharing plan, Mr. Clairmont would go back to his pitch that the company was in trouble, they had no sales, they lost their Phillips account, their stores were in trouble, they were losing money to the extent of approximately $700,000 a year, they had to do something somehow to go out and get new customers.

He needed a new sales staff so that they could go out and ~~provoke~~ promote new business and it seemed that between his pitch on sales and his pitch on the pension plan, he would always seem to be getting back into those two areas.

Q Did the union representatives indicate to Mr. Clairmont and to the other company officials that they would cooperate in any reasonable form of increasing productivity or efficiency, production efficiency?

A Yes. The union representatives most certainly

indicated that. And further, the international union, through Mr. Burdon, proposed that Mr. Barbu conduct a study to determine the problems that this employer was having in his business.

As a matter of fact, the international union agreed to pay half of such a study if the company was willing to pay half.

The company agreed and Mr. Barbu, on behalf of his company, agreed to institute such a study of the employer.

Q Did the company indicate that there were any restrictive practices in the union contract that prevented them from being efficient?

A Yes. One of the big problems that was brought up, the company contended that on some machine they were only making 25 tires, while their competitors were making 35 tires.

They also contended that -- they needed super seniority. They also contended that they needed some provision in the nature of allowing them to subcontract.

I think at this time they also mentioned the fact that their off-standard payments were very costly to them.

I might add at this point that there is and there was no employer at that time nor at this time that in fact

cost, higher conversion cost?

A Of course, the entire problem rests with management. This is their function. They oversee the operation of the plant.

They are the ones that dictate to the employees within the working agreement what is going to be done in all areas of the plant.

Q What happened after the Strong-~~Narovich~~ Narovec report? Did anything happen? When was your next meeting, let me put it that way? When was the next meeting that you attended with the company?

A Well, it would have been some time in approximately July of 1964.

Q Let me, before we get to that, ask you something about the sixty-day notice.

Do you recall there was some testimony about the company giving thenotice to the union? Is that the normal practice, that the company, sixty days or a little more than sixty days before a working agreement is due to terminate, that the company gives the notice?

A No. The normal practice is for the local union to submit a sixty-day notice.

As a matter of fact, in the ten and a half years that I have now been employed by the international union,

this is the only time I know of that an employer has submitted a sixty-day notice to amend and/or terminate.

Q All right. Now, I think you mentioned before to the Court that -- but I think it would bear repetition in this connection -- Mr. Hess testified that the local still gave their sixty-day notice.

Could you tell us what the significance of the union's giving the sixty-day notice notwithstanding the fact that the company had already given it?

A Yes. I might add that there are three different requirements under law before a party can be put in the position to be able to strike.

First we have the notice requirement under the agreement. The agreement contained a sixty-day notice to amend or terminate.

Under the law, we also have a sixty-day requirement.

Further, under the law, we have a thirty-day notice --

Q By the law, you are referring to the Taft-Hartley?

A Taft-Hartley, and more specifically Section 8-D of that act.

It also provides that within the sixty-day notice, you must also submit a thirty-day notice to

Federal Mediation.

If you, as a party, do not submit any of these notices and you engage in strike, then you are, as a consequence of that, engaging in illegal activity, and that is the reason why the local union did in fact submit those notices.

Q In point of fact, is it the universal practice for unions, certainly within your international, to routinely send out those sixty-day notices?

A It is a practice that I have seen accomplished without fail.

As a matter of fact, we at the international union notify each respective local union that their contracts are terminating and that is time to submit such a notice.

Q The sixty-day and then the thirty-day?

A That's right.

THE COURT: Isn't the union ever satisfied with a contract to run its term?

THE WITNESS: Yes. They are always satisfied to run its term, your Honor.

THE COURT: Why the provision to terminate on sixty-day notice?

THE WITNESS: No, no, no, your Honor. For

example, what we are talking about, currently we have three-year agreements.

THE COURT: Yes.

THE WITNESS: In the three-year agreement, we provide that prior to its termination date, we will submit a sixty-day notice to re-open that agreement so that we could amend it and, if necessary, to terminate it.

Now --

THE COURT: Well, it terminates anyway at the end of sixty --

THE WITNESS: No, your Honor, it does not. Because if you don't submit such a notice, it automatically renews itself for another year, and then --

THE COURT: I get you.

BY MR. AUERBACH:

Q In other words, it is a year-to-year renewal if you did nothing about it?

A That's right.

Q Mr. Vasko, I would like to show you Exhibit 13-A, which is a letter of Lee Tire to Mr. Hess as the president of Local 227, dated June 28 --

MR. MOSS: What year?

MR. AUERBACH: 1963, I'm sorry.

Q -- and ask you to read it.

to do with the case.

THE COURT: Well, I can judge what they have to do with the case or not.

One comparison he made was disastrous from his point of view but --

BY MR. AUERBACH:

Q I'm sorry, sir. What is the significance of the setting of the rates? What is the importance of it; the whole job evaluation?

A During a period of time, rates have a tendency to get some looseness. By that, your Honor, I mean this: Let's say a rate is established, which rate provides that an employee to receive 100 percent payment, he should make twenty-five tires.

During the period of time, several things might happen. Some element might be taken out of the job or the employee finds certain shortcuts in the making of the job.

So in the beginning where he may have been able to make twenty-five tires in eight hours, we find that an employee is now making twenty-five tires in six hours.

So we have a situation where he has 25 percent more time available wherein he is not producing, and under the normal situation, there is nothing the employer

not done anything about, bringing on a situation where the employee instead of producing more, produces at the same pace because the employer being responsible for this function has not studied the job as it was his prerogative to do.

And, of course, there are situations where the employee, because of his skill, is able to, as a matter of course, be more proficient in his job. Of course, different employees are more proficient than others.

For example, when I was in the plant, I was able to complete a job in six hours where it may have taken other employees eight and a half hours to do.

Now, when an employer requests the job evaluation program, this gives him a complete right to move into every job in that plant and regardless of the skill or regardless of the proficiency of the employee, it is a situation that gives him a right to reassess and increase the production on every facet of that employment.

BY MR. AUERBACH:

Q As far as the union contract that was in existence at Conshohocken in these areas, was it any different than the union contracts that you had in your other locals?

A We have a standard contract at the international

offer, you recommend an employer's first offer?

THE WITNESS: Oh, not the first offer, no.

THE COURT: This is in the nature, I gather, of a negotiating tool just like the strike --

MR. AUERBACH: Your Honor, that was not a first offer.

THE WITNESS: No, your Honor, do you know what that is, your Honor? That is an unqualified -- that is a unilateral act by an employer when he takes -- when an impasse has occurred in negotiation.

THE COURT: Is that usual?

THE WITNESS: No, most unusual, your Honor, most unusual.

THE COURT: The union made a strike vote which is a negotiating tool?

THE WITNESS: What came after that --

THE COURT: Wouldn't that be a counter-negotiating tool from the employer expected after that?

THE WITNESS: No.

THE COURT: They wouldn't?

THE WITNESS: No, that very seldom occurs, your Honor. No, once the employee complement takes a strike vote, it is as you stated, it was a tool.

Now, in this situation, as you can tell by what

has transpired in the background of this situation, the local union never struck. The deadline went by. They didn't strike until they were given these new work rules. That's when they concluded that they were forced out, your Honor.

But the union in this situation was agreeable to working on a daily basis.

THE COURT: I understand that, but the employer clearly was not?

THE WITNESS: Right.

THE COURT: In that situation, isn't the employer going to take an extreme position? He's not going to come up with what he is ready to settle with, is he?

THE WITNESS: Not at all. In common practice, that doesn't happen. For example --

THE COURT: You mean in common practice when the union tells the employer, "I've got a strike vote," the employer then offers what he is willing to settle for?

THE WITNESS: No, no, not necessarily.

THE COURT: I wouldn't think so.

THE WITNESS: No, the employer does one of two things, your Honor, in the usual situation:

He either sits back and is willing to take the

strike, or he ups his offer. That is what usually happens.

But the employer, at least the employers we deal with, your Honor, never take such a drastic move as was taken here.

DIRECT EXAMINATION (Continued)

BY MR. AUERBACH:

Q Let me get a little more into the question of a strike vote.

I think Mr. Hess testified that the membership did not actually vote to strike, the membership voted to give the executive board the right to strike.

He has testified that that was a negotiating tool, but is it also a delegation tool?

A Yes. Customarily, the membership will delegate to either the negotiating committee or the executive board to take such action if they feel such action is required, and you have to bear in mind that in this particular situation, prior to 1963, this local union had never entered into a strike, never.

THE COURT: This is the first time? According to what you tell us, Mr.Clairmont said he never had a strike before and the union never had a strike before.

THE WITNESS: That's what he said. Right, your Honor.

BY MR. AUERBACH:

Q Is one of the purposes or could one of the purposes of the delegation to the executive board be for the purpose of giving the executive board greater latitude in negotiating?

A Yes.

THE COURT: That seems obvious; gives the union flexibility.

MR. AUERBACH: So the negotiators don't have to go running back.

THE COURT: Right.

Q Let us go, Mr. Vasko, a little more into what the Judge brought up in terms of the procedures in negotiating when, in light of this nine-point program, you said that this is most unusual to unilaterally put in a new set of rules and say this is it.

What are the alternatives, what is normally done?

A Usually, the procedure on reaching a deadline is one of two things:

Either the one party strikes, the other party locks out, or the parties agree to some type of daily extension or some type of maybe thirty or sixty-day extension of the present contract in the hopes of continuing negotiations so that they might reach an agreement.

THE COURT: You've got three possibilities: One is the strike by the union; two is a lockout by the employer, and three is a temporary accommodation of one sort or another.

THE WITNESS: Yes, I can say one or two further possibilities, your Honor, but I would say they would be the prime ones.

THE COURT: These are the usual possibilities?

THE WITNESS: Yes.

THE COURT: I suppose ingenuity can think of other ways.

THE WITNESS: Right.

BY MR. AUERBACH:

Q I think there is some testimony here that the union offered to go to binding arbitration, Mr. VAsko.

Is that sometimes a practice that is followed when parties reach a deadlock?

A We have never agreed, outside of this situation, to go to binding arbitration, and that is a very seldom-used practice.

THE COURT: When did this happen? My recollection isn't very clear on that.

MR. AUERBACH: I think the Federal mediator recommended it in July 1963, and Mr. Hess testified that

I think we've got to bear in mind that there was a most unusual situation. This is something that doesn't customarily happen. As a general rule, any time we have a strike or have a lockout eventually we come to an agreement and the employees come back to work, and this iw what the employees were accustomed to seeing.

So I am sure all the employees involved had hoped that ~~some-or~~ somehow and in some way an agreement was going to be reached. They had no other livelihood. They were out on the street. They had nothing further to do. It doesn't cost them anything to meet. It didn't hurt them to meet, and they still had the hope that somehow and in some way some aggreement was going to be reached.

Of course, your Honor, they also had the thought that perhaps they may have been entitled to some benefit, like the discontinuation of ~~oepration~~ operation benefit under the welfare agreement.

THE COURT: I suppose I might as well disclose what I am thinking actually happened in that respect. I have no doubt that Mr. Hess testified what he now remembers having said. And equally no doubt, like every other human being that has been in the fire, he remembers himself saying everything he should have said as of looking at the thing from now, and I very much doubt he ever said exactly

what he now remembers himself as having said, without in any way challenging the fact that he now remembers that he said it.

Therefore, this hypothetical question that I pose to Mr. Vasko is an unrealistic one.

Q Mr. Vasko, do you recall the testimony that Mr. Hess gave about filing grievance No. 260, the severance pay for all employees, and do you recall his testimony that this was rejected by the company because there was no agreement in effect, and the question then arose whether they had filed a written or formal demand for arbitration, and he testified no, there was no written demand for arbitration filed because there was no point to it?

I think he further testified that they told him or that, yes, they sent the grievance back, and I don't know whether he testified that there was no pointto making a demand for arbitration.

Can you tell us what is the significance of that, and why it was not necessary to file a written demand for arbitration?

A As a matter of common practice, when the employee complement files a grievance the employer either grants their request or denies it. If the employer denies it, he usually explains why such request is being denied.

provided for the termination after a month on layoff, a grievance on that point would have been to no avail. So at that time the only thing the local union could have hoped to have accomplished was to have negotiated on that matter.

If an agreement was reached, which, of course, it wasn't, the local union would have negotiated with the employer that these employees either would have been recalled or still remained on layoff.

Q I would like to get now to the question that was raised as to why the picketing went on when Goodyear took over the plant and before a contract was entered into with Goodyear.

Are you familiar with that situation?

A Yes, I am. As a matter of fact, I was involved.

Goodyear Tire & Rubber came to us and told us they were interested in taking over the plant, but they were unwilling to assume the agreements that had expired with Lee Tire. They also were unwilling to recognize the URW as the collective bargaining agent of those employees.

Because of that, the employees at Lee continued to picket in the hopes of forcing Goodyear to recognize them as the collective bargaining agent.

THE COURT: Was there a competing union?

THE WITNESS: No, your Honor. But the pickets did continue to picket the Goodyear plant, and Goodyear refused to recognize the URW.

THE COURT: I just asked you what may be an irrelevant question. It wasn't just a question of your union or another union?

THE WITNESS: No. It was a question if they would recognize our union, which they did not.

THE COURT: At first?

THE WITNESS: No, they did not at all. What happened was once there was an employee complement in there the employees petitioned the National Labor Relations Board, held an election, and the NLRB then certified the URW as the collective bargaining agent.

THE COURT: And at that point they recognized you, since they had no choice?

THE WITNESS: Yes, your Honor.

THE COURT: In other words, it didn't have the effect you hoped it would have, the picketing?

THE WITNESS: It did not accomplish its aims, right. Basically, your Honor, it is what was termed as recognitional picketing.

Q I would like you to address yourself now to the fact there was a different terminal date for the welfare

agreement as opposed to the collective bargaining agreement. Can you tell us why that was?

A We customarily attempted to do that for the reason if the collective bargaining agreement and the welfare agreement had the same termination and we struck over the collective bargaining agreement that would have terminated, of course, also, the welfare agreement, and all the benefits in the welfare agreement then wouldn't have been forthcoming to the employees.

By having a different termination date on the welfare agreement, if we strike under the collective bargaining agreement the employees would still receive their benefits under the welfare agreement, such as hospitalization, sickness and accident benefits, etc.

It was really strategy to assure more benefits tothe employees.

Q I would like to get back back to the question of the NLRB charges. In the various companies the INternational and various local unions deal with, are there changes in top management from time to time?

A Often. We are confronted with a change, I would say, at least twice a month.

Q Does the NLRB, as far as you know, take this sort of thing into account?

to ask for a special distribution, that they never made any response to that letter; did you hear that testimony?

A I heard testimony that they did not believe the letter, yes.

Q Well, I believe the testimony was he did not respond to that letter. Do you recall whether they consulted you at that time as to the fact that they had asked for a special distribution and were not being given it, that the company said they were not entitled to it under the SUB agreement?

A I don't recall being consulted.

Q Did you give Mr. Hess any advice on this subject? Was it at your advice that they sent this letter with respect to the laid off employees?

A No, It wasn't.

Q You testified that the first time you met Mr. Clairmont was October 31, 1962?

A That's correct.

Q Was it a meeting at which the company had requested the people of the international and the two locals to come to Akron, I believe?

A That's correct.

Q You testified that at that meeting Mr. Clairmont

spoke about the need for some kind of pension relief?

A That's correct.

Q Am I not correct that the meeting was opened and the person who was, so to speak, chairing the meeting was Mr. Garthwaite, who was then president of Lee?

A Mr. Garthwaite introduced Mr. Clairmont. I am unaware that Mr. Garthwaite was chairing the meeting, that's correct.

Q Well, let's see. The minutes of the union which have been introduced here as Exhibit 30A said that "The meeting was held up because President Burdon didn't appear or was late, and that after his arrival Mr. Garthwaite started reading a prepared statement regarding the seriousness of the company's situation."

A That's true.

Q Do you recall that?

A Yes.

Q And that "Then President Burdon interrupted to apologize for being late, and Mr. Garthwaite continued with his statement."

So that the first statement about the company's situation was made to the union by the representative of the old management, right?

A That's correct.

Q And that he suggested the problems and suggested that it was necessary to reduce the cost of the operation, to improve the product, reorganize the entire sales system and that they couldn't do anything about this unless the union would cooperate?

A That's true. I don'tthink Mr. Garthwaite even broached the question of pensions.

Q Yes, okay.

After having spelled out the situation for the company, he introduced Mr. Clairmont, right?

A That's right.

Q And Mr. Clairmont brought up -- among one of the things he brought up was the question of the pension problem?

A That's correct.

Q And he said that there were a lot of things that needed to be done, they needed to have a crash program at the company, they needed full production of Lee tires, they must eliminate featherbedding, we can't continue to function in the way we have been going; right?

A That's what he said.

Q And then he asked Mr. Garthwaite to talk to you about certain matters at the Conshohocken plant, right?

A That's correct.

Q And then Garthwaite said there are five or six

things, and then he listed them, as to what the company needed?

A That's right, I recall that.

Q That is what is known by Mr. Hess and the rest of you as Clairmont's six or seven points, right?

A I don't know what Mr. Hess considered six or seven points.

Q Well--

A I don't recall myself referring to anything as such six or seven points, Mr. Moss.

Q I see. But it is your --

MR. AUERBACH: I think, your Honor, that Mr. Moss is confusing two things: Mr. Hess talked about the six-point plan and he said that this was when they were negotiating for the contract which ended, and he said that the company would not take it unless we gave in on all six points.

THE COURT: Were those six points any different than these six points?

MR. TAYLOR: I believe the minutes that Mr. Moss is referring to was then they first outlined the six points.

THE COURT: Are they any different from the six points that Mr. Hess was talking about later on down the road?

MR. TAYLOR: It is called a transitional phase, I think, your Honor.

THE COURT: I am not suggesting it is a theory, but it does not seem to me there is a difference between Garthwaite and Clairmont at this point. I do not think it is material.

Q Am I also correct that Mr. Garthwaite or Mr. Clairmont, either one of them, said that the door was open for you people to come in and look at the company's records and see the problems which the company was facing?

A I believe he said that, yes.

Q And the reaction of your international president was that he could hardly sit here and listen to proposals about a contract which was not open for negotiation, right?

A That's true.

Q That was your first reaction to this, was --

A No, that was the reaction of the international, Mr. Moss.

Q I see. Did he represent the union's reaction to the matter?

A Yes.

Q They could hardly control themselves to sit there and listen to the company's problems when the working agreement was not subject to negotiation at that time?

A That's what he said, Mr. Moss.

Q At the time that this meeting was held, the real question that was in controversy between the company and the union was the welfare agreement, right?

A It was only in controversy because of the employer's refusal to fund.

Q Mr. Vasko, I show you what has been marked Exhibit 36, which is the agreement for pensions, service award and insurance benefits, dated June 30, 1961, and I refer you to Section 7 and ask you what was the obligation of the company under that agreement to fund the pension benefits?

A Item 7?

Q 7. Funding.

A Section 7?

Q 7. Funding.

MR. TAYLOR: That is under the pension program, Mr. Moss?

MR. MOSS: Yes, page 12, Section 1.

Q "The company agrees to begin the funding of pension benefits under the plan not later than July 1, 1962, by means of payments into a pension trust or trusts or payments under an insurance contract or contracts," etc., right?

A Yes.

MD Garber - direct 608

United Rubber, etc.

v. 66 Civil 1154

Lee National Corporation

February 7, 1973
10:00 a.m.

(Trial continued.)

THE COURT: Do you have a new witness?

MR. TAYLOR: Yes. We would like at this time to interrupt temporarily the cross examination of Mr. Vasko to introduce as plaintiff's witness Mr. Robert Garber, and with your permission we will call Mr. Garber to the stand, please.

ROBERT E. GARBER, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TAYLOR:

Q Mr. Garber, would you tell us your present occupation?

A I am currently employed by General Tire & Rubber Company, and am vice president of industrial relations, chemical plastics division.

Q How long have you been so employed by General Tire?

A Since May 5, 1971.

Q Will you tell us what your duties are?

A I am in charge of all personnel functions, including salary, hourly, EOC, OSHA --

THE COURT: What is OSHA?

THE WITNESS: Occupational Safety & Health Act.

A Salary administration, contract negotiations, job evaluation, piecework --

THE COURT: Contract negotiation, you mean, with labor unions?

THE WITNESS: We have labor unions, yes.

THE COURT: In relation to employees?

THE WITNESS: With employees.

A And anything pertaining to the employees of the company, salary and hourly, comes under my jurisdiction.

Q In this function, do you supervise all the manufacturing facilities of General Tire & Rubber in the chemical plastics division?

A In the employee relations field, yes.

Q You are familiar with the controversy in question here, are you not?

A Yes, I am.

Q Were you at one time affiliated with the United Rubber Workers?

A Yes, I was.

Q Will you go back in time, please, beginning with

th- first time you became affiliated with United Rubber Workers, and bring us up to date on your jobs, duties and responsibilities?

A Will you repeat that?

Q From the time you were first affiliated with United Rubber Workers, bring us up to date. When did you first become affiliated with the United Rubber Workers?

A I was originally a member of the United Rubber Workers in March of 1946 at the Firestone plant in Pottstown, Pennsylvania.

Q And then?

A When we organized the union at that plant it became known as Local 336 of the United Rubber Workers Union, and I was elected president in 1946, a position that I held until 1962, when I went to work for the INternational Union as a special representative and assigned to the research department, and also as Firestone coordinator for the 14 Firestone plants.

I left the United Rubber Workers in 1962 to take the job --

Q 1962?

A 1972 -- to go to work for General Tire & Rubber Company.

Q I believe you mean 1971?

A Yes.

Q As president of the Pottstown local -- and, by the way, excuse me, the same Pottstown plant of Firestone is in the vicinity of Conshohocken, Pennsylvania, is it not?

A Yes, within twenty minutes to a half hour drive.

Q As president of that local, were you head of the union bargaining committe?

A Yes, I was. We had a number of bargaining sessions. The way they operated in the Firestone chain, as we called it -- by the way, there were fourteen plants -- we had local bargaining and then we had master contract bargaining which originated in Akron or Cleveland, and in which all of the Firestone plants sent representatives to meet with the company to hammer out items of a national basis, such as pensions, wages increases, insurance, and so forth.

After that was completed, then each of the plants was allowed to negotiate things that were peculiar to their own local situation, such as seniority, job bidding procedures, and items of that nature.

I was involved in all those negotiations from 1946 on up to the time I left the Rubber Workers Union.

THE COURT: In both national and local?

THE WITNESS: Yes.

Q You became part of the International staff affiliated with the research department I believe you said in 1962?

A Full time in 1962, but prior to that for a number of years I was assigned on a part time basis by the International bnion as a chairman of a three ~~men~~ man committee for the Firestone local unions to negotiate a new time study and job evaluation system for all the Firestone plants.

Three members from the union and three members from the company were on it. I was chairman of that committee for the union. That took place over a period of about two to two and a half years, meeting maybe three or four days every two weeks.

Q This was prior to 1962, I take it?

A Yes.

Q And the three member committee from the union was picked on a national basis?

A Yes, by the INternational president.

Q And you were chairman of that particular group on behalf of the union?

A That's correct.

Q The purpose of that particular committee was to

go into time studies for job evaluation and incentive programs?

A Time studies and job evaluations are two different fields, but we were charged with the responsibility of doing both in making the existing time study and job evaluation studies in all plants for use in future plants in the Firestone chain.

Q It might be of some help if you would explain briefly what you mean by the terms time study and job evaluation.

A Job evaluation is a system which gives you the relative worth of one job as compared to any other job. You want to set your plant so that you will know what Job B is worth in relationship to Job A or C or D, and this is done by a series of evaluations based on factors and degrees such as responsibility for equipment, responsibility for materials, responsibility for safety, the physical effort required, the responsibility for quality, skill required, training required, educational background required.

Each one of these factors is rated, and after they are rated there's five different categories they fall into. Each of the categories gives a certain point value for each of these different types of job factors, and the total

number of points are then assigned to that total job based on this evaluation.

Those points then are related to the points that would be arrived at by the same process on any other job in the plant, or the total jobs in that plant compared to the total jobs in another plant. It gives you relative values so you know the sweeper's job is worth so much money, and the tire builder's job is worth X dollars and cents compared to something which is the base point.

If you are starting off from a new plant you would normally get three, four, five or ten jobs in the surrounding vicinity and have the job descriptions of them, evaluate them, and set a curve, and then you would plot on your own plant all the job descriptions of all the jobs you intend to have, evaluate them on the basis of the job description, andrelate them to the values of the area.

If you are going to do just a new job in your plant you would already have your curve from the jobs that were in existence, and evaluated in your own plant, and this would fit into the curve based on the new job description and the new job factors and the new job points.

Q Within, for instance, a tire building function

there would be different types of machinery. Would you be evaluating the different jobs of machinery within the tire building classification?

A You would get an hourly rate or a base rate for the total tire building concept regardless of the type of machinery. You take basically to be a tire builder would you need six months, 12 months, a year or two years training, what would be your educational requirements to become a tire builder? That type of factor is used to determine the base or hourly rate. It has nothing to do with the establishment of piece work rates, which is the elemental breakdown on how fast you can perform certain tasks or functions in the tire building operation.

Job evaluation normally wouldn't concern itself with the fact that there were one, two, three or four different types of machines in one classification. If they were dramatically enough different then in all probability it would show up this should in fact be in a classification. You can have a number of different types of machines as long as there is some degree of similarity within the same classification that would fit into the job evaluation program.

Q Within job classifications, if certain jobs

were deemed to be more crucial than others with regard to seniority, for instance, is that what you would refer to as key classifications? Is that term currently used to describe such a situation?

A I wish you would repeat that question.

Q Perhaps I have made it too long, but would you explain the term key classifications?

A All right. In the rubber industry the companies and the unions in different locations have worked out different procedures whereby long training jobs are somewhat protected from the normal seniority arrangements spelled out in the contract, and there are a number of different reasons for this benefit to the company and also a number of reasons beneficial to the union.

Basically, it works this way: Suppose you have plantwide seniority. ~~Did~~ If you have a cutback normally the youngest person would be laid off, would be the first to go out the door. If the youngest person happens to be a long training job, such as in some cases a tire builder, the company would have an agreement which would specify this type of classification as a key classification. In effect it puts up a fence around that classification and prevents the normal

seniority application from touching people within the confines of that fence.

In other words, if the tire builder was the youngest person, and if he was a key classification, and there were a cutback he couldn't be bumped, the next youngest person who was not a tire builder would have to be laid off.

THE COURT: Is that sometimes called superseniority?

THE WITNESS: No, superseniority is a slightly different item. It's similar to that. Superseniority gives a person preference that he doesn't otherwise have to a job. This only permits a man to stay on the job he already has, for which he has been trained, and prevents somebody else from bumping him out of that.

Conversely, if there is a layoff in the tire building classification he may have other people with more seniority on layoff but if they need a ~~fire~~ tire builder under the ~~reclassification~~ key classification concept they would have a right to recall him out of seniority.

The union benefits from this because of the fact that if you don't build the tires you can't cure them, if you con't cure them you can't sell them, if you

don't sell them you can't use the people in the preparation departments and so forth.

THE COURT: Why isn't that superseniority as I have been hearing about it? I don't get the difference.

THE WITNESS: Superseniority, I guess, depends on how the various parties at a particular plant entering a particular contract write their super-seniority provisions but superseniority gives you the right to bid on different jobs, gives you the top seniority for whatever purpose, whether it's job bidding, layoff protection, shift preference, orany other reason.

THE COURT: What reason would there be for giving a man superseniority?

THE WITNESS: Mostly that is worked out for the union officers, with the concept that any time anybody in the plant works regardless of what job he is on, the union people have a right to have somebody there to represent them, and in that context is where I have always been exposed to the idea of superseniority. Union officers and representatives of superseniority to let them work on jobs even though it is not a long training job.

THE COURT: Do I correctly deduce what you

people have been calling superseniority he has been calling the other thing?

MR. AUERBACH: Yes, sir.

THE COURT: So when heretofore the word superseniority has been incorrectly used according to this witness.

Just as long as we understand each other.

BY MR. TAYLOR:

Q For the benefit of the witness, there has been testimony concerning the term superseniority which seems to coincide with your term key classifications?

A There is an element of the same thing there.

THE COURT: It is perfectly permissible to use a different word as long as we all know what it means.

Q From your knowledge of the tire industry, are there many plants that have key classifications for the tire builders?

A In the last ten or so years it's been more and more of a common practice. Originally there was very few. I would say since 1960 I would estimate probably 50 or 60 per cent of the plants now have some form of key classifications.

THE COURT: Let's use the word key classification. That is his word.

A And that varies, and sometimes it's just one classification, and in other plants it might be two, three or four different classifications.

Q In or about 1962, 1963, it was still a fairly rare occurrence?

A Yes.

Q From 1962 on, when you were employed full time by the International, would you explain in a little more detail the type of work you did between 1962 and 1971?

A I was assigned to the research department when I had nothing else to do.

THE COURT: Was that often?

THE WITNESS: No. But I did have enough time in the research department, and basically my function there was to analyze financial reports of companies, provide information on wage rates, working conditions, contract points, and disseminate this information to the various local unions. On occasion, to go out into the field and audit company's books, and this was part of my research department assignment. My other assignments, as part of the special representatives job, was basically to be a trouble shooter for the International Union. Wherever there was a trouble

spot, where there was a strike situation or an impending strike situation, you would be called upon to go and see whether or not the International Union, through my assistance could be of help to the settlement of the dispute.

In that capacity I was involved inthe situations in Armstrong Rubber, where we had a 120-day strike, Mohawk, West Helena, Arkansas, which was a situation where the local union had gone on strike for 90 days, the company had the plant up for sale, Sun Rubber in Akron, Ohio, PPG, Davol in Providence, Rhode Island.

THE COURT: What's PPG?

THE WITNESS: Pittsburgh Plate Glass.

A Sweger in Denver, Colorado, and then there was this missile place out in Los Angeles on strike.

In addition to those jobs, my main function and my other job was as Firestone coordinator, which meant that I was responsible for the day to day activities of all the 14 Firestone plants insofar as the negotiations, ~~grivances~~ grievances of any type, piece work, arbitration, unfair labor disputes, anything in relation to the industrial relations field affecting the Firestone plants.

Q There is on a national basis for the union,

leading the union's negotiation team against Firestone nationally?

A That is in the contract negotiations, yes. But then in the administration of the contract you had that same problem. My counterpart was Joseph E. V. Karens, who was vice president for industrial relations of the Firestone Company. I would deal with him on a day to day basis.

Q That would be approximately the exact opposite of your present position then?

A Yes.

Q Would you tell us a little bit more about this term piecework in an incentive system, or such as it may be called. As part of the job valuation program you were talking about the term base rates and adjusting for different jobs beyond that, within a classification of a job, and you have referred to the term piece rates or piecework. Could you give us some further explanation on this?

A Yes. I tried to explain that a job evaluation program is designed basically to tell you what an hourly rate of a particular job should be, and that would apply to all jobs in the plant. The company might, in addition to having a job evaluation, which

puts the base rates in proper perspective, decide to try to increase production or output by placing certain jobs in piecework, whereby the worker is not paid on a flat hourly rate but he is paid upon a system which is based on how many units of production he makes in a given hour or in a different day.

Now, if you just have a minor simple operation it's very easy to make a measurement, you just take a digit and put it in the machine and it comes out the other end, but when you get into a complex operation such as tire building or such as the other operations in the tire industry you might have hundreds of elements of work each of which have to be measured to determine how long an average experienced employee should take to perform that particular element of work.

This is done by a stop watch which can be as fast as a ~~hundred~~ hundredth of a foot a second, and these series of studies are taken on a number of different individuals in order to determine what the average employee should make in units of production in a given amount of time.

Normally, we like to say in the rubber industry, and I think it's the most common one, that the base rate would be the equivalent effort required of an individual to walk on a smooth level floor without load at

at the rate of three miles per hour. That would be the base rate equivalent.

The piece worker working at an incentive speed would normally be required to perform at a base equivalent to walking four miles an hour. In other words, approximately 33 per cent faster than base rate expectancy; for which he would then be paid something above and beyond his base rate earnings.

THE COURT: You have to get up to four miles before you began to get the incentive pay?

THE WITNESS: On that basis, yes. Some of them start paying off as soon as you get above three. The normal expectancy would be the average output with the equivalent of four. Some people might be able to put out the equivalent of four and a half miles.

All the activities and elements are rated on the basis of these concepts, or some other similar type of measurement.

Q If we are talking about getting into the efficiency of production we would be talking about an incentive program, is that correct?

A You would be talking about possibly both.

Q Both which? I don't understand "both."

A You could be talking about reevaluating

your day work jobs, or you could be talking about restudying your piece work jobs. You could do either one or both or neither.

Q In the situation at Conshohocken, Pennsylvania, with Local 227, when did you first become familiar with the situation?

A I was familiar with the situation by word of mouth from the International president for a number of weeks, but I was first assigned into Conshohocken on June 19, 1962. I first got there then, and I was assigned on June 18.

O Mr. Garber, you said 1962. Did you mean 1963?

A '63.

O June 19, 1963.

THE COURT: You heard about it about four, five weeks before that?

THE WITNESS: Yes, we were talking about in the Akron office.

O When you arrived in Conshohocken on June 19, 1963, would you please describe the situation which then existed as yousaw it?

A May I make reference to my notes?

THE COURT: I assume you have no objection?

MR. MOSS: Are they new notes, old notes?

THE WITNESS: Notes I made at the time.

O They are your own personal notes?

MR. MOSS: Notes he made at the time?

O They are notes you made at the time?

A Yes.

THE COURT: Do you realize counsel for the other side will have an opportunity to look at those notes, if they want to?

THE WITNESS: I don't care. They may not be able to understand my writing, but he can look at them.

THE COURT: My notes would be safe on that score.

MR. TAYLOR: Your Honor will, I suppose, permit a couple of minutes to get assembled?

A The first thing I did when I got there on June 19th was to confer with the union committee to get their version of what was going on, but the first meeting we had with the company was on June 19th.

Q Who was present at that meeting, if you remember.

A Well, my notes show Norman Heil, J. J. Conway, George A. Burnstein, A. E. Barkett; and for the union it was Mr. Hess, Mr. Sabol, Mr. ~~Baldente~~ Baldante, myself and Tarbutton. Then there was a Leonard J. McGee from the Federal Mediation Conciliation Service.

Q This was a contract negotiating meeting, I take it, then.

A Yes.

Q I see. Where was that meeting held?

A That was held at the plant.

Q I see.

A In Conshohocken.

THE COURT: This was June 1963?

THE WITNESS: Yes, sir.

Q June 19, 1963.

THE COURT: That was your first physical contact

with this?

THE WITNESS: Yes, on the scene.

THE COURT: Yes.

THE WITNESS: And Mr. McGee started out by asking each side what their version of the situation was as of that time.

Q Would you tell us approximately what it was?

A Yes. I want to skip these things that don't have any bearing.

Mr. Conway stated for the company that items that the company feels of major importance must have a settlement on the major issues, otherwise there was no reason to spend a lot of time on minor issues.

Then he lists the items he was talking about not in order of importance. He made that clear.

THE COURT: He made that clear, it was not in order of importance?

THE WITNESS: Yes, the order that he listed them.

A One would be a substantial reduction in wages, and the company proposed a 25% across-the-board reduction.

Two, a need for a job evaluation program. He stated that he never had one.

THE COURT: That is what you have been describing, the job evaluation?

THE WITNESS: Yes.

A Third, the company wants a list of key classifications which would be exempt from the normal application of seniority.

Then he stated in that connection that they had five hundred people on lay-off, and if the company had to recall strictly on the basis of seniority, it would have tremendous training costs.

Fourth, he proposed a limit on recall rights.

THE COURT: He proposed a limit?

THE WITNESS: On recall rights.

A He explained that the present contract, the contract at that time, there was no limit during which -- for the time in which an employee retained his rights to be recalled to a job provided he registered his then current address on a yearly basis.

And the company wanted to put a limit of six months on his rights to be recalled.

THE COURT: Just for my curiosity, does seeing those notes refresh your recollection so you remember it happening, or are you just reading the notes?

THE WITNESS: I remember it happening from this.

THE COURT: You have seen the notes and it refreshes your recollection and gives you a present memory

of it happening?

THE WITNESS: Yes, sir.

A Fifth, they were proposing a revision of the off-standard payments. Basically, the old contract provided for a 100% of past average in the event of unforseen events, such as lack of stock transfer from one type of machine to another, a number of items of that type which interrupted the piece worker in the normal course of his events.

The company wanted to reduce the 100% payment to 90% payment.

Number six, the company's proposal was to eliminate, during the then existing contracts, all the economic items that they had granted as concessions in the previous set of negotiations in 1961 to the union. Basically consisting of an eighth paid holiday, an increase in the SUB fund, the supplemental unemployment benefit fund. Certain concessions on reduction in the vacation qualifications and a procedure whereby an employee was on vacation, had a funeral, could extend his vacation by the equivalent of three days.

They wanted that eliminated from the contract.

THE COURT: With respect to this last group, do you know offhand whether these were special rights to this

plant or were they part of the --

THE WITNESS: These were exactly the same items that had been agreed to by all other major rubber companies in the United States, and Lee at that time in 1961 had followed what they call the basic big 4 pattern.

THE COURT: This is part of the basic big 4 pattern, this group?

THE WITNESS: Correct.

A Number seven, they wanted a more inclusive management rights clause.

Number eight, the company proposed a termination date of September 30, 1965, and explained that they were changing their fiscal year and they wanted the contract to have the same termination date.

THE COURT: That last does not sound like a very vital issue.

THE WITNESS: That's what we ended up as saying at that time, both sides. At that time it was listed as one of the major items.

A The company wanted a change in the procedure whereby an employee who was or had been transferred from the bargaining unit could return back into the bargaining unit.

The then existing situation was the employee

in thatsituation could return only if there was nobody on lay-off with more than two years' seniority. And at that particular time they explained to us that there were approximately 400 people on lay-off who had more than two years' seniority. They wanted to have freer rights to return to the bargaining unit in case of a cut-back in the salary group.

THE COURT: That meant people that had gone over to the employers wanted to be able to get back in the union?

THE WITNESS: Yes.

Q The supervisory people, I take it?

A Supervisory or other confidential forms of employment.

And then the item number 10, the company wanted to change the method of payment for vacations. They had been paying employees average hourly earnings for the last four pay periods prior to the vacation, multiplied by the number of average number of hours worked. They wanted to change that. Eliminate that to a flat two per cent of earnings, with no minimum.

Q What does that mean?

A Well, most contracts will provide for vacation payment with a two per cent of the last year's earnings, but if a person was out sick or on lay-off or on leave of

absense, most contracts contained a provision which set a minimum under which he can't go. It might be the equivalent of 32 hours' pay, it might be any other minimum that the parties may agree to. In some cases it would be 40 hours minimum, in other cases 36. If the two per cent would come up with less than that, we'd still get the higher amount.

Q In this case, the company proposed no minimum?

A No minimum whatsoever.

Q I see. Just straight two per cent.

A Then they stated that there were other items but these were the 10 most important.

Q As best as you can remember, on that same date, could you tell us what the union's position was on or about that same date?

A Yes. They referred to them here as articles in the section numbers, and I wrote them down but I'd have to go back and refer to the proposals to explain them in detail.

Q In that case, would you hold that just for a moment?

I would like to show you these documents, and can you explain what they are, please?

THE COURT: What are you showing him? Are they in

evidence?

MR. TAYLOR: No, not in evidence, your Honor.

A These are typewritten minutes of the negotiations kept by union representatives and typed by union representatives for May 29 --

Q 1963?

A -- 1963, June 28, 1963, July 3, 1963, and July 5, 1963.

Q And the papers that you are now holding in your hands, which you just described, did you bring those in your suitcase and your valise to work with you?

A Yes, I did.

Q You had those in your possession personally?

A Yes.

Q In this period of time?

A Yes.

Q Are they copies of the ordinary minutes kept by the union?

A Yes.

Q I see.

A These are mimeographed and passed out to all members of the committee.

MR. TAYLOR: Your Honor, at this time I am going to ask a few questions concerning it. These are identical

to documents 35-A to 43-A, except they are four sets, sets of four meetings which the plaintiff did not previously have, and we would like to offer them on the same exact basis as we have all the rest of the documents which have already been entered into evidence.

THE COURT: Have you shown copies to Mr. Moss?

MR. MOSS: I have never seen any of these documents before. We requested at the deposition production of all the union minutes, some two and a half, three years ago. It seems rather odd that they are just appearing now without any previous notification from either Mr. Taylor or Mr. Auerbach.

MR. TAYLOR: Your Honor, they were produced only last night for the very first time and we explained previously, we have had testimony, that the local's records as well as the company's records are somewhat in disarray.

THE COURT: You could have given them to Mr. Moss this morning when you got here.

MR. TAYLOR: Well, as I mentioned, your Honor, I'm certainly allowing him time to look them over. They are hardly out of the ordinary. I believe Mr. Heinrich would be familiar with them as well.

MR. HEINRICH: I have never seen them.

MR. TAYLOR: You have not looked at them yet?

THE COURT: These are distributed just among the union?

THE WITNESS: Yes.

THE COURT: They were not distributed to the other side?

THE WITNESS: That's correct.

THE COURT: They were not?

THE WITNESS: They were not. To the best of my knowledge.

MR. MOSS: Your Honor, I do not see the propriety of him producing through this witness some minutes dated May 29, 1963, when he was not even there.

MR. TAYLOR: Your Honor, I will add something else. We have the person in this courtroom who kept those minutes and was responsible for the entire series of 35-A to 42-A, I guess it is, or 43-A, currently in evidence and who kept these four documents as well.

We can certainly put him on to certify the evidence, et cetera.

THE COURT: Who is that?

MR. TAYLOR: Mr. Tarbutton, the secretary of Local 227.

The reason for the May 29, your Honor, is only

because it's a set of minutes that we didn't previously have. It's part of the whole series.

The reason I have a copy of those May 29, when I went in I asked for all documents that had been exchanged between the parties, including proposals and minutes. I wanted to know what was going on up to that time.

Q And did you also receive at that time a set of proposals made by the company?

A Oh, yes.

Q Do you have them with you?

A Yes, I do.

THE COURT: Were they the same as we have had before?

MR. TAYLOR: No, your Honor. As a matter of fact, I would like to show the witness at this moment Document 13-A, your Honor, the letter of June 28, 1963, which has been much discussed in evidence and in the testimony, containing the company's latest proposed revisions of that date, and I would like to ask the witness if he is familiar with the letter and the contents of those particular proposals.

THE WITNESS: Yes, I'm familiar with this.

Q Yes. Now, may I see the proposals that you said you had received upon arrival in Conshohocken?

A These are the proposals that were made by the company and were on the table at the time I entered into negotiations.

2/3

Q What is the date on that document?

A There's a number of different dates. The original date was typed on here, June 7, 1963, and it was crossed out, but these were presented to the union on June 14, 1963.

Q Presented by whom to whom, do you know?

A By the company negotiation committee to the union negotiating committee.

Q I see. How did you obtain what is in your hands?

A When I came into the meeting on June 19th I asked for copies of the proposal, and they were given to me by the company.

Q They were the then existing proposals still under discussion at that time?

A Yes.

MR. TAYLOR: Your Honor --

THE COURT: Have you shown that to Mr. Moss?

MR. TAYLOR: I am about to do that, your Honor.

THE COURT: Show it to him.

Whose handwriting is this, yours?

THE WITNESS: Most of it is mine. That one

crossing off the date, I don't recall who made it; but the notations on that whole document are my notes and my handwriting.

THE COURT: Has Mr. Moss got a Xerox of this which shows the witness's handwriting?

MR. TAYLOR: Yes. He has an exact photostat.

THE COURT: Do I understand the company no longer had a copy of this?

MR. MOSS: I do not know. I have personally never seen it before.

MR. HEINRICH: I never did, either.

THE COURT: You are Mr. Heinrich. Were you there?

MR. HEINRICH: Not at that meeting, but I was on the negotiating committee for the company. I just didn't attend that meeting, I don't believe.

THE WITNESS: You weren't there, not on the 29th --not on the 19th.

THE COURT: Who gave you this document that I am holding in my hand?

THE WITNESS: Mr. Conway.

THE COURT: Mr. Conway?

THE WITNESS: Yes.

MR. HEINRICH: No, I was not at that meeting, your Honor.

THE WITNESS: That's right, you weren't.

THE COURT: If this came from the company --

MR. MOSS: My colleague tells me we do have them somewhere. I have never seen them before.

THE COURT: All right. Presumably you won't challenge this witness's testimony that he got it from the company?

MR. MOSS: No.

MR. TAYLOR: Your Honor, I ask that these documents be received in evidence.

THE COURT: These are two different types of documents.

MR. TAYLOR: And the minutes, your Honor --

THE COURT: Let us keep the minutes separate. First this document of June --

MR. TAYLOR: June 7, 1963.

THE COURT: -- 7, 1963. It was marked first June 7th, and then it was crossed off to the 14th, and then it was reinstated 7th.

Do you remember how that happened?

THE WITNESS: No. I discussed that and it was actually presented according to the information both parties gave me at the time. It was presented on the 14th of June to the union.

THE COURT: The 14th. Do you have any objection to that, Mr. Moss?

MR. MOSS: I do not quite understand yet. This was not the first negotiating session, was it?

THE WITNESS: It's the first one I participated in.

THE COURT: At this negotiating session, this witness asked to be given anything that was previously on the table and he was handed this document by Mr. Conway.

MR. MOSS: He came first on June 19th and he got this document, he says, from Mr. Conway?

THE COURT: Who sponsored his request to be given anything that had previously been considered.

MR. MOSS: What is this document now supposed to represent, changes which had been made on the June 7th document before you came or had anybody negotiated anything with respect to this before you got here?

The negotiations began on May 29, 1963, didn't they? And there have been one, two, three, four, five, six meetings.

THE COURT: Do you want a voir dire? Why don't you voir dire.

THE WITNESS: That's why I'm waiting.

THE COURT: Mr. Moss, ask him any questions you

want.

VOIR DIRE EXAMINATION

BY MR. MOSS:

Q I am correct, am I not, you say that you got this, Mr. Garber, on June 19th, right?

A That's correct.

Q From Mr. Conway?

A Yes.

Q Who wrote "Latest provisions" up on the top?

A I don't know.

Q That is not your handwriting?

A No. This is. That "latest provisions" is not mine.

Q Who wrote "July 7" or put "14" and then put "7" underneath?

A I don't recognize that as my handwriting, either.

Q I see. Who made all of the other changes?

A I did.

Q The strikings out?

A Each one of these items is my handwriting, notes I made at the time. I used this as a work sheet.

If you notice Article 3 on page 2, for example, I have that item crossed out and the company withdrew with thedate 6/26/63.

Q I am interested in this. How do you know what has happened? Does this paper reflect what happened in any of the meetings before you got there?

A This document was then the current company's position as of June 19th, prior to the times these things were crossed out.

As I said, these crossings out, the notations, were my notes, of things that happened subsequent to June 19th.

Q But the document is dated June 7th?

A That's correct.

Q Is it your testimony that nothing had been done with respect to the negotiations on these proposals prior to your arrival?

A No, sir. I didn't make any testimony whatsoever about what happened before I got there.

Q So you do not know what had been going on before?

A I didn't say that, either, but I didn't testify to that.

Q Why don't you testify to it now. When you came into those meetings on June 19th, did you know or were you told that these had been negotiated on before your arrival and that certain conclusions had been reached, or were you starting fresh from this as the first negotiation on

this document?

A Which question do you want me to answer now, was I starting fresh from this document? Yes, because I asked the parties what is the current position, and I was given this. This is the company's current position.

There had been previous sets of negotiations. There had been previous documents exchanged. I have another one in front of me which I was told was the original company proposal in rough form, but was not in contract language. That was dated May 29, 1963.

Q I see.

A You will find a very distinct similarity between the subject matters on here and the contract wording that was contained in this document which was written up and given to me on June 14th.

MR. MOSS: Your Honor, I do not contest the authenticity of the document. I think it behooves the plaintiffs, to show something about this proposal, whether it was dictated June 7th or whether it was not presented until June 14th, and then how it became back to be June 7th.

I also think that if there is going to be any of these documents put in evidence, that probably they ought to all be. The plaintiffs are being very selective here on the minutes that they are producing. They havenot

produced any minutes of the May 29 meeting --

MR. TAYLOR: We just brought them in, your Honor, I believe.

MR. MOSS: -- any minutes for the May 31st meeting, no minutes for the June 7 meeting, no minutes for the June 9th meeting, no minutes for the June 11th meeting.

THE COURT: They represent they are putting in all the minutes they have, and you obviously can draw --

MR. TAYLOR: The defendants would not have any of those particular minutes.

THE COURT: -- you obviously can ask me to draw any inferences you want to ask me to draw from this failure to produce the ones that you deem important.

As far as this type of minutes is concerned, it seems to me the witness has identified his present recollection of what he was told about it.

MR. MOSS: Your Honor, I think maybe this is the time to raise the question as to whether the issue in this case is what the company and the union did with precisely every contract proposal which the company made throughout the negotiations which began on May 29, 1963, and ended, as far as the working agreement was concerned, in February, 1964, and the welfare agreement, which began in May 1964 and

ended in November of 1964; whether it is the Court's view that the issue here is that each one of these proposals and counter-proposals and discussion and everything is relevant in this matter; and whether we must go through each one and support the company's position with respect to each one.

If so, then that is going to make the trial last for an indefinite amount of time.

It is the defendant's position that the sole issue before this Court is whether or not the defendant company had made up its mind sometime prior to July 16, 1963, that it was going to force a strike and never reopen the plant.

I do not believe that it is proper, on this occasion, to go into every single one of the negotiating proposals and the position of each party on it and laboriously pick out the changes in position through the minutes, some of which are not available.

For that reason, I object to this document in evidence and this examination as to the precise details of each of the company's proposals and the union's opposition.

THE COURT: How much detail you do need to go into is obviously a question for the judgment of the respective

counsel subject to some control by the Court, but the issue, as I understand it, boils down to the fact whether this was a charade the company was going through or whether it was not.

I do not see how you are going to resolve that issue without some mention of what positions the respective parties took at the various times, and I suppose I have got to determine whether the parties were acting in good faith.

As I understand your counterclaim, you say it was a charade on the union's part?

MR. MOSS: No, not a charade on their part. That they deliberately set out to put the company out of business at a certain stage in the proceedings, and that they did that by ~~adamantly~~ adamantly refusing to go along with what the company needed.

THE COURT: In other words, their so-called negotiations were a charade?

MR. MOSS: No.

THE COURT: If they were determined to put the company out of business --

MR. MOSS: The company finally gave up and went out of business.

THE COURT: So it was a charade, because they were not going to come to an agreement, they would not let the

company work, is your theory. Their theory is that the company was not going to come to an agreement, they would not let the union come back, because the company had determined to close the plant as of the date that the union struck.

MR. MOSS: Your Honor, I am not objecting to the issue which I see before the Court, which is posed by the complaint as amended, which is that the company had determined, prior to July 16th, to force a strike and never reopen the plant.

It seems to me, through the testimony of Mr. Hess, Mr. Hess has testified as to what the proposals of the company were which the company insisted upon sticking to, and the union's position about those proposals.

All I am objecting to is any procedure which is going to require the company to support every single statement it made at the negotiating sessions with respect to each section of the contract and whether it is legitimate; because the fact of the matter is that the law is that a company, if it takes a position which it takes in good faith, it may stick with that position until hell freezes over, and if the union takes the position which it takes in good faith, that it is not going to take a wage cut, it can stick to its position until hell freezes over, and that is the end of the matter.

If they wish to have a test of economic strength, which the union chose to do when it decided to not work under the work rules of the company, then that is it.

That underscores the importance of the union's complaint and its amended complaint to the NLRB that the company was not bargaining in good faith, because the proper forum for a decision as to the question of whether either party was or was not bargaining in good faith is the National Labor Relations Board, which has exclusive jurisdiction over those areas.

Now, I object to all of this testimony about specific little daily sessions, particularly when the union is not able to present anything but a selection of minutes of those meetings.

THE COURT: That goes to the strength of the union's case; and, as I understand the union's position and Judge Mansfield's opinion, which does not bind me, but it certainly instructs me, what the union has to prove in this case is that the company made these propositions not for the purpose of bargaining, but for the purpose of putting the union in a position where they -- that the company, which had the right to close its plant on July 3rd, or whatever the date was, if they wanted to, but had it done so it would have incurred certain

liabilities under the contract -- they would like to not close the plant, but go through a charade of bargaining for the period necessary to permit it to close its plant without these contractual relations.

I must say I do not see why you are objecting to these minutes. It seems to me they cut in the opposite direction.

2/5 MR. MOSS: The real issue before the Court is whether the company made that decision before July 16th.

THE COURT: Obviously I cannot psychoanalyze the company to find that out. I have got to judge by their actions.

It seems to me that these minutes are relevant to that decision. I do not think you have to establish the validity of every point that they made. I think that it immaterial.

The nature of their proposals that they made seem to me to be relevant on the issue whether they were made for the good faith and purpose of keeping the plant open, or as a subject that he was proposing on July 3rd --

MR. MOSS: July 16th.

THE COURT: -- July 16th, and thereby eliminating their contractual responsibility.

MR. MOSS: Your Honor, the National Labor

Relations Board under its authority has decided that up through the time of the amended complaint, which was August, there was not sufficient evidence presented by the union to justify the issuance of complaint that the parties were not bargaining in good faith. That decision is within the exclusive jurisdiction of the NLRB.

THE COURT: I do not think that -- although it is within the approved jurisdiction of its own terms -- I do not think that is binding or even very persuasive in this lawsuit, although the theory is quite different, and the evidence, which is being presented here, presumably was not presented at the NLRB, and the plaintiffs had not thought of this theory at that time.

MR. MOSS: That' of course, raises the question and poses the possibility that a union unable to support a refusal-to-bargain charge then has, despite the exclusive jurisdiction of the National Labor Relations Board, an opportunity to bring a lawsuit claiming fraud, which is reopening the question of refusal-to-bargain simply in another forum under another guise, is it not?

THE COURT: I recognize that possibility, it seems to me had the law been otherwise, Judge Mansfield would have granted your motion.

MR. MOSS: Well, I will see if I can present some

law to you that I did not think necessary to present to Judge Mansfield.

THE COURT: Fortunately, I assume Judge Mansfield disqualified himself because he is now with the Court of Appeals.

MR. MOSS: I object to this testimony on all the minutiae of the negotiations. I have no objection to Mr. Garber stating whatever the facts are which bear upon the good faith of the defendants in making their proposals.

THE COURT: I trust Mr. Taylor will have sufficient good sense not to go into the minutiae but to use this as merely demonstrating his contention and using it to demonstrate a contract.

Admitted.

MR. TAYLOR: Document number 97-A will be the June 7, 1963, document entitled "Subjects for Negotiation Proposed by Lee Rubber & Tire Corporation for Conshohocken Plant."

xxxx (Plaintiff's Exhibit 97-A received in evidence.)

MR. MOSS: Your Honor, at this time I wish, however, to request either you to request the plaintiffs or to permit me to request the plaintiffs to make a thorough search, which I doubt that they have heretofore made, for the minutes, the remaining minutes, of the

local union.

Mr. Tarbutton is sitting here; he is supposed to have taken them. Mr. Hess is sitting here; he had some of them. Mr. Garber, who for years was an employee of the International Union and could well have been asked to produce the minutes, is here now with a hand full of them.

I think that it is about time that the minutes either were produced for us to consider or that their subsequent production on the morning of an examination come to an end.

MR. TAYLOR: We will try to do that, your Honor. But now forgive me if I first interject; I mistakingly said this document was being entered as 97-A. My apologies. It is 98-A that would be the next number in order, your Honor. 98-A will be "Latest Company Proposals Dated June 7, 1963."

(Plaintiff's Exhibit 97-A in evidence now correctly marked Plaintiff's Exhibit 98-A and received in evidence.)

MR. TAYLOR: For the edification of the Court, we have made a more recent search to be sure that the previous search did not fail to show up some of these missing minutes and records. And the answer which we will

produce by testimony, but which I can state for plaintiffs now, is that we have not come up with anything other than that which has been produced here by Mr. Garber which had been in his files.

Coming back to that issue, the record of the four negotiation meetings which have been tendered by the plaintiffs into evidence, your Honor, I move that they be accepted into evidence as part of the original series previously marked 35-A to 43-A in that they be numbered seriatum 99-A, et seq., 99-A, 100-A, 101-A, 102-A, and that they respectively be 99-A, the meeting of May 29, 1963; 100-A, would be the meeting of June 28, 1963; 101-A would be the meeting of July 3, 1963; and the meeting on July 5, 1963, would be 102-A.

I move that these four documents be admitted into evidence.

THE COURT: Mr. Moss, these are on a different footing than the others because you have not stipulated that they represent the minutes of the meeting and that they are authentic documents.

MR. MOSS: You know, your Honor, I think it is about time that the plaintiffs produce Mr. Tarbutton, who supposedly took these minutes, so that we could at least examine him on how he took them and when they got typed up.

MR. TAYLOR: We would offer to present to the later hook-up, in order to keep this witness whose time is rather short, on.

THE COURT: They will be marked for identification at this point and subject to Mr. Tarbutton's testimony.

xxxx (Plaintiff's Exhibits 99-A through 102-A marked for identification.)

2/6 MR. TAYLOR: All right, your Honor. My associate asks that perhaps we would put Mr. Tarbutton in and swear him in on the voir dire, just for this purpose, and then if he could be excused for later testimony on other issues and then come back.

Would that be all right with you, Mr. Moss?

MR. MOSS: I would just ~~assume~~ as soon have them marked for identification now.

MR. TAYLOR: We are going to have substantial testimony, your Honor, and I would just as soon clarify the evidental value.

THE COURT: Is the witness going to refer to this now?

MR. TAYLOR: Yes.

THE COURT: Voir dire Mr. Tarbutton now.

(Witness excused.)

MR. TAYLOR: Plaintiffs call Walter Tarbutton, please.

WALTER TARBUTTON, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

VOIR DIRE EXAMINATION

BY MR. TAYLOR:

Q Mr. Tarbutton, what was your position in 1963? Were you affiliated with the United Rubber Workers?

A Yes, sir.

Q Were you working in the Conshohocken plant of Lee Rubber and Tire Corporation?

A Yes, I was.

Q Were you a member of Local 227?

A Yes, sir.

Q What was your position with Local 227 at that time?

A What time in '63, sir?

Q Were you ever an officer of Local 227?

A Yes. I was on the negotiating committee for eight years preceding that. Then, when they had the lay-offs, I became Secretary of the Union in April 1963, when the former secretary, Mr. Fred Delaney, was laid off. I became Secretary.

Q In such capacity, was it your ordinary responsibility to take minutes of various meetings with the company, negotiating meetings?

A Yes, it was.

Q Did you in fact do that on a fairly regular basis?

A I did, yes, sir.

Q Did you transpose those minutes into typewritten form?

A I sure did.

Q Did you make copies of them?

A Yes, sir.

Q Did you distribute copies of them to various persons within the union on behalf of the union for whom it would be necessary and pertinent to have them?

A I gave them to each and every member of the negotiating committee, of the union's negotiating committee now.

Q I am showing the witness copies of documents 35-A to 43-A, inclusive, and ask Mr. Tarbutton do you recognize these. They are already in evidence.

MR. TAYLOR: I am showing the witness documents 35-A to 43-A already in evidence, your Honor, which have been admitted as minutes of various meetings.

Q We just want to see, Mr. Tarbutton, if you recognize these documents as minutes that you previously kept.

A That is correct.

Q For the union local?

A Yes, sir.

Q I would now show you the documents which have been tentatively marked 99-A to 102-A, and ask if those are also familiar to you. Would you inspect those, please, to make sure they are something you are definitely familiar with.

A These are definitely mine, yes, sir; these are mine.

Q Those are also minutes that you kept as Secretary of Local 227?

A True.

Q For the meeting dates stated there?

A Yes. Yes, sir.

Q Could you tell the Court, just on one final question: We already know those are not the records of all the meetings which took place between the company and the union from the time you became Secretary in April and between the time the negotiations began in the period of July. Some are missing. Could you explain why some are missing and not in your possession?

A Well, they were all kept down at the union hall and, after all, ten years is a long time. They got mislaid or something. I don't know what happened to them but there was minutes there of all the meetings.

Q Have you made --

A You must realize I haven't been an officer of that union from 1965; for seven years I haven't been around that union hall.

Q I see. Did you make a due and diligent search to the best of your ability for all such records?

A Yes, I did.

Q In order to offer them to us for the trial?

A I went home on Monday night and made another search.

3/1

mdrl Tarbutton-direct 660-661

THE COURT: What did you do? Describe your search.

THE WITNESS: When I first got to Philadelphia, I went to Norristown, I stopped up at Mr. Hess' former address, and asked if he had any more records up there that we could get, and they said, no, they hadn't any more, they didn't have any more.

I went home, I searched all around my place, couldn't find any more. I called up a former lawyer that we had by the name of Mr. Randolph Wardon. I couldn't get hold of him. I talked to his son. I left my telephone number there and told him would he please get his father to make a search and see if he had any of the union's records, and if he did would he please call back.

His son asked me then, he said if my father doesn't have them is it necessary for him to call you back?

I said "I I see no use if the man doesn't have them. I am not going to spend his time, because he is busy," and he did not call me back, so evidently he does not have them.

That is the search that I made, sir.

MR. TAYLOR: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. MOSS:

Q Mr. Tarbutton, did you take shorthand?

A No, sir.

Q How did you take these minutes?

A With pencil and paper.

Q Did you write down everything that happened at the meeting?

A I wrote down the things that I think were important, just like Mr. Heinrich and their secretary had done the same. I do not think they wrote everything either, sir.

Q You didn't take everything down?

A I just answered that question, sir, and I told you, I wrote down, like any other secretary would write down. I do not think any secretary wouldwrite down everything, sir.

THE COURT: Just answer the question.

Q You just wrote down what you thought was important?

A You are not putting words in my mouth. I told you what I done, sir.

Q You used a selection as to what you put down and what you didn't put down, did you not?

THE COURT: You are just characterizing what he said.

A I made no selection. I put down what I thought was right. And that was it.

Q How long did it take you from the time you made these notes to the time that you transcribed them on the typewriter?

A I left the negotiation meetings, went home, typed them up, cut a stencil, and mimeographed them. I did not keep a record of my time.

Q Did you type exactly what you had handwritten?

A I typed what I had handwritten, yes, sir.

Q Exactly?

A I cannot swear exactly. Suppose I made a mistake and missed something. I ~~dont~~ done it to the best of my ability.

THE COURT: The question is not did you make a mistake, but did you expand your handwritten notes when you typed or did you just type what you had written?

THE WITNESS: I typed down what I wrote.

THE COURT: You could do it in two ways, you could write key phrases and then expand it in typing or just type what you wrote. Which did you do?

THE WITNESS: I wrote what I had. I didn't

add or subtract.

Q Let me show you what's been marked Exhibits 30A, 31A, 32A, 90A, and I ask you if you took those minutes.

MR. TAYLOR: He testified he didn't become secretary of the local until sometime in April of 1963, he couldn't possibly have taken minutes in 1962.

MR. MOSS: I want to get information on that.

MR. TAYLOR: They are stipulated as authentic and entered in evidence.

A This one has Mr. Delaney's name on it. I think I stated Mr. Delaney was secretary of the union at that time. I would imagine that, sir.

Q How about the others?

A The same thing goes with this.

THE COURT: Name them. I can't see them.

A 32 is Mr. Delaney. This is April 16, 1963. This is my name.

Q You took those minutes?

A Yes. I said I became secretary in April of 1963.

Q I asked you if you took the minutes, Mrs. Tarbutton.

MR. TAYLOR: Of this particular meeting.

A This meeting is a meeting with the International Union. I imagine somebody from the International took these minutes, I believe, sir, to answer you correctly.

Q You don't think you did?

A To my knowledge I would say the Interntional Union took those.

MR. MOSS: I ~~objection~~ object to the introduction of these exhibits in evidence on the ground that the witness himself says that he took down only what he thought was important, and thereby obviously exercised selection.

THE COURT: That is true of all business records.

MR. MOSS: Not of all proper business records, your Honor.

THE COURT: It is true of certain records.

MR. MOSS: Certain business records are books of accountand without the possibility of selection.

~~THE COURT: I would imagine even in books of account and without the possibility of selection.~~

THE COURT: I would imagine even in books of account you only put in what is important.

MR. MOSS: In connection with regular

mdr6 Tarbutton-cross

accounting procedures.

THE COURT: You put in what is necessary for regular accounting procedures, you don't put in all other items.

MR. MOSS: I object to them. I think they are untrustworthy in the sense they put down only what this witness felt was important, and they are offered here to prove what happened at the meetings.

THE COURT: Objection overruled.

MR. TAYLOR: I might add --

THE COURT: Don't add anything. The objection has been overrruled.

MR. TAYLOR: No further questions of this witness. You are excused, Mr. Tarbutton.

(Witness excused)

MR. TAYLOR: Plaintiffs recall Mr. Garber.

Then I take it, your Honor, the minutes of the four meetings are entered in evidence the way identified as 99A, 100A, 101A, 102A.

THE COURT: Right.

MR. TAYLOR: Consecutively for the four meetings in chronological order.

THE COURT: That's correct.

(Exhibits 99A, 100A, 101A and 102A were

received in evidence)

R O B E R T E. G A R B E R resumed.

DIRECT EXAMINATION CONTINUED

BY MR. TAYLOR:

Q Mr. Garber, do you have a copy of those minutes in front of you?

A Yes.

THE COURT: Mr. Garber, your testimony is everything except the words "latest provisions" and the 14 and 7 numbers, is your handwriting that is on this document?

THE WITNESS: Yes, sir, that is my testimony.

THE COURT: Do you want to check through to make sure there are no other exceptions.

THE WITNESS: I think I better.

On page 15 there is a date written in which doesn't appear to be in my handwriting:

"June 14, 1963, 2:30 p.m."

That is not my handwriting.

On page 29 -- page 31 I crossed off in typewriting and 29 is handwritten in, the words "All maintenance division jobs except unskilled jobs in department 7," that is not my handwriting, either, sir. "List of key jobs" is

its title.

THE COURT: That is not yours?

THE WITNESS: It's not mine, sir.

Those are the only places where I see any notations that are not mine, sir.

Q In looking over documents 99A to 102A, please, would you tell us the substance of each of those meetings that you attended? Forgive me, not 99A, I mean starting with 100A. The meeting on June 28, No. 100A, Mr. Garber.

THE COURT: Mr. Garber, we are not interested in having you read these documents in. To the extent they refresh your recollection as to what happened, just tell us. Just don't read what's there, if you don't remember.

A I am not sure if I understand what the question is.

Q I would like to elicit from you, Mr. Garber, to the best of your knowledge and with the use of the source documents in front of you, the substance of the negotiation meetings, these three meetings, June 28, July 3 and July 5.

MR. MOSS: I object to that question. If these minutes have any validity at all they represent

the substance of that meeting, don't they?

THE COURT: He can testify by refreshing his recollection from those minutes what he now remembers about them, if he can. If he doesn't, then he should say so. The question is quite broad. I would suggest you narrow it down to each one, at least.

A There were a number of different items discussed, and I can address myself to each of them.

THE COURT: I think the question is too broad for the witness to handle.

Q Mr. Garber, during the course of those negotiations with the federal mediator present, was there any discussion concerning impaneling a fact finding panel for the issues in dispute here?

A Yes, there was.

Q Will you tell us something about that, please?

A Mr. McGee made a suggestion that --

THE COURT: When did he do that, as far as you can remember? Can you fix the date when he did this?

THE WITNESS: Yes, sir.

July 5, 1963.

THE COURT: You got that from your own notes?

THE WITNESS: Yes.

THE COURT: Tell us about that suggestion.

THE WITNESS: Mr. McGee asked the parties if they thought that they could utilize a fact finding committee to find out what the facts were and make recommendations, and he asked the company if they would be willing -- he first asked the union if the union would be willing to accept such a fact finding panel and the union said yes, providing they could agree upon the ground rules. Then he asked the company if they would agree upon a fact finding panel and the company said no, and to the best of my recollection they listed four reasons why they said they didn't want to go along with it.

THE COURT: What were the four reasons, to the best of your recollection?

THE WITNESS: May I refresh my recollection?

THE COURT: Yes.

THE WITNESS: Mr. Heinrich was there at the time --

THE COURT: The witness' last answer was without reference to notes, and he is now referring to his notes.

THE WITNESS: Mr. Heinrich was there at the time, and he answered no, they wouldn't agree to the fact

finding panel for four reasons: One, fact finding is for larger industries; two, he said it takes too long; three, what facts would the fact finding board want that we do not already have; and, four, the board of directors feel that they cannot abdicate their decision making responsibilities.

On that basis, the company rejected the proposition.

Q Was there ever any suggestion that the parties submit themselves to any form of binding arbitration?

A At the same time Mr. McGee went on, "Does that mean it rules out arbitration, also, of the dispute?" and they said "Yes, it does."

THE COURT: What did the union say about finding arbitration?

THE WITNESS: He didn't ask the union. He asked the company, and they said no, but we said we would.

THE COURT: But that was after the company had already rejected fact finding?

THE WITNESS: Yes.

Q With specific reference to the meeting on July 5, 1963, document 102A, and the colloquy between Mr. Conway,

Mr. Conway, Bernstein, federal mediator, Mr. Heinrich and yourself, federal mediator Mr. McGee did say, "From the way the company is talking arbitration is also out, is this correct, Mr. Heinrich?"

And Mr. Heinrich said "Yes, this is correct."

Mr. Garber, would you carry on from there, please, and discussion the situation stated as the company position on July 5, as to its material and most important elements, not the minutae.

THE COURT: The union was never asked about binding arbitration until the company already rejected fact finding?

THE WITNESS: That's correct, to the best of my knowledge.

THE COURT: So as the union negotiator you knew the union was on safe ground in accepting binding arbitration at that point.

THE WITNESS: You have done some negotiating yourself, sir. I think it was possibly so. I think the fact finding panel at that time could have been very helpful.

THE COURT: I understand. But it has been said the union accepted binding arbitration, and I wouldn't call accepting binding arbitration in any realistic

sense. I take it, without your saying so, you agree with me.

THE WITNESS: Let's say we were pretty sure at the time the company's answer to that would be "No," also.

THE COURT: So obviously you say "Yes"?

THE WITNESS: No, I think if they said "Yes" we would be happy to follow through with it.

THE COURT: You didn't have to reach that point?

THE WITNESS: Unfortunately.

Q Mr. Garber, on page 2 of the July 5 meeting there is a statement by Mr. Conway concerning the company's position on major items. I would merely like you to review it -- it seems like nine items there-- and tell me if in any material extent it varies from the proposals which you received on June 19 whenyou first came to Conshohocken, and which are now designated as document 98A?

A The company's proposals on July 5 were essentially the same as they were on the first day of my being there, with the exception that in the interim period they had discussed the possibility of increasing the recall rights from six months to 12 months, the

period
rights during which an employee on layoff would have recall rights. In the interim they agreed to go from 6 to 12 months.

Q You mean the company's original position was six months and they now increased it to 12?

A Yes.

Q Do you know what the terms of the current contract called for in that regard?

A They were unlimited. This would have been something substantially less than what was in the current contract, the 12 months.

THE COURT: The current contract was unlimited, as long as he kept on registering?

THE WITNESS: That's correct. Once a year he had to register.

Q Can you explain the significance of this recall rights with regard to the laid off employees?

A Yes. If you could remove an employee from the recall list and remove him as an employee you were also eliminating certain obligations you would have under the separation or severance or other arrangement you might have if he was on the recall listand was considered as an employee at the time of any plant closure, shut down, or cessation of operations.

Q Will you explain the difference between separation and severance?

A Separation pay is a payment that under the SUB contracts, ~~subcontracts,~~ in most contracts, provides an employee with a lump sum payment in the event ~~exter~~ he is laid off for a period of time and the likelihood of his being recalled is practically nil. He is paid a separation pay under the SUB agreement.

THE COURT: That is at his election, isn't it?

THE WITNESS: Up to a certain point. After a period of time, in most cases it's two years, the company has the right to exercise its options.

THE COURT: The company has the right to pay him off?

THE WITNESS: Yes.

A Now, there is other types of payments under the pension agreement. I believe the technical term is service award under certain conditions if an employee becomes physically unable to do the type of work but he doesn't qualify for a pension. Then there is a special distribution we normally refer to as a severance award which provides a lump sum payment to an individual in the event of a permanent and complete

closure of a plant.

That varies from contract to contract. In some places it is only paid if there is a permanent and total closure of a plant. In other contracts it's paid if there is a partial closing of an operation within a plant. It's normally based on the number of weeks pay for each year of service. The higher the years of service the higher the number of weeks pay for each year of service.

Q On a formula that would be included in the contract, a percentage formula?

A Yes.

Q So that in a plant where there was a great deal of seniority the severance pay, as you refer to it, might amount to a substantial amount of money, is that correct?

A It would definitely amount to a substantial amount of money. For example, it might be one and a half weeks pay for each year of service if he had 10 years of service. If it was 15, it might be two weeks. If he had more it might go higher. The higher the years of service the higher the lump sum payment to each individual.

Q With regard to the meetings on July 3 and

July 5 that are in front of you, do you recall any discussions concerning extending the then technically expired contract? As a matter of fact, discussions from June 19, when you first came to Conshohocken, discussions with management concerning the ~~extention~~ extension of the then current contract which was set to expire June 30, 1963?

A If you want me to pick out the dates I will do that, but I know there were several proposals made and discussed between the parties about extending the contract on either a day to day basis or for a period of seven days.

THE COURT: You mean extending the old working rules?

THE WITNESS: Yes, the then existing contract.

Q This was a company proposal to extend for a period of seven days, did you say?

A Yes. The first proposal I believe was made on June 21.

Q And thereafter there were variations --

THE COURT: The company made the proposal?

THE WITNESS: Yes, but then it withdrew it. They made the proposal on the 21st and withdrew it at 7:30 p.m. I believe that same night.

MR. MOSS: Your Honor, he is talking about a proposal to extend the terms of the old working agreement while they negotiated on the new one beyond the expiration date of June 30.

Aren't you, Mr. Garber?

THE WITNESS: Yes.

MR. MOSS: He is not talking of an offer of the company to extend for two years.

THE COURT: I understood.

THE WITNESS: I am sorry.

THE COURT: You made that perfectly clear.

THE WITNESS: I said on a day to day basis or for seven days.

THE COURT: It's just that Mr. Moss doesn't have confidence in my ability to understand.

MR. MOSS: There has been testimony by Mr. Hess the union rejected that, and I thought you had expressed that the company had proposed that extension, and I thought you had misunderstood him.

THE WITNESS: I have a copy of the company proposal on June 21, which was to extend the contract on a day to day basis without an agreement while negotiations are still continuing and requiring that in the event the union decided to resort to strike action it would

agree to give the company a seven-day notice of such cancellation.

That proposal was made on June 21, and withdrawn on June 21 at 7:30 p.m.

Q It was withdrawn by the company the very night it was offered?

A Yes.

THE COURT: What had the union done about it in the meantime?

THE WITNESS: We were still meeting.

THE COURT: Mr. Moss reminded me there was testimony that the union rejected that. Is that correct?

THE WITNESS: No, this was withdrawn by the company. That is what my notes show on June 21 at 7:30 p.m.

Q Was there any further discussion to the best of yourmemory concerning further proposals to extend the contract?

A Yes. I think that was a Friday, becauseon Monday they gave us --

THE COURT: I clearly remember Mr.Hess saying that he rejected that.

THE WITNESS: Not that one. There was a

proposal made on June 24 or 25 which was similar in nature to extend the contract and under similar circumstances.

The union at the time didn't reject that. They said they didn't want to sign such a document --

THE COURT: Who is they?

THE WITNESS: The union. Because of two different reasons. One, they didn't think the membership had given them that authority. And, two, if they had signed any kind of written agreement with the company that raised the possibility that under the law they would be required to give other notices to the government, if they did later on want to resort to strike action, there was a distinct possibility under the law once you reach a written agreement with a company to extend an agreement that you have to give the required 30 to 60 day notices in order to cancel. This is one of the fears the union had. They say we might be willing to talk about working on a day to day basis, but we don't think we should enter into a written agreement to do so.

Q After June 30 they did work on a day to day basis until July 16?

A Yes. The union had no objection to working on a day to day basis, but didn't want to enter into a

written agreement to do so.

Q And that was the reason?

A Yes.

MR. TAYLOR: Your Honor, at this time I am showing the witness --

THE WITNESS: Sir, have I made myself clear? You are required, before you can strike a company, once you have a written agreement, to give a certain required notice to the government, if you enter into a written agreement, and that is what the union was afraid of, that they would be required to give another set of these notices.

THE COURT: I understand your point.

Q Are the documents you have just been referring to, the memorandum of June 21, 1963?

A Yes.

Q And there is a letter you have been referring to dated June 25, 1963 from the company to Mr. Hess signed by Mr. Heinrich which included with it what's called a memorandum of understanding dated June 24, 1963?

A Yes.

Q And these two documents you have just been discussing, is that correct?

A That's correct.

THE COURT: Will you excuse me a minute?

MR. TAYLOR: Yes.

(Adjourned to 2:15 p.m.)

Service of 2 copies each of the aforementioned
set of Exhibit volumes admitted this 12 day of
December, 1974

Roger Patton

Patterson Freiden Prashker
Feldman & Gartner
Attorneys for Defendant -
Appellee

Service of 2 copies of this within
[illegible] is admitted this
7 day of [illegible] 197[illegible]

ATTORNEY FOR [illegible]